

REVISED FINAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend and adopt provisions governing Section 3000, and Sections 3130 through 3147, of the California Code of Regulations (CCR), Title 15, Division 3, concerning inmate mail.

The Department recognizes that there have been inconsistencies in mailroom processes statewide that have needed to be addressed and standardized. The Department further recognizes that most of the existing mail regulations in the CCR have not been updated for at least 10 years. In developing these revisions, consideration was given to each institutions physical plant differences and staffing allotments. The revisions have been developed to align the Department's mail policy with current United States Postal Service (USPS) regulations, to avoid litigation regarding treatment of certain bulk rate items, and to incorporate older Administrative Bulletins regarding various changes to mail procedures. As such, the revisions will assist in streamlining the processing of inmate mail, and upgrade and standardize the operation and the efficiency of the institution's mailrooms.

It should be noted that changes to the initially submitted Final Statement of Reasons have been made in red with a dotted underline.

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action, or would be as effective and less burdensome to affected private persons than the action proposed.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the facts, evidence, and documents initially identified in the Initial Statement of Reasons support an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

ASSESSMENTS, MANDATES AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing business, or create or expand business in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not affected by the internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

Section 3000

Section 3000 was amended in the initial text to expand upon the definition of an indigent inmate to include those inmates without sufficient funds to pay for first class postage. The Department has determined to return the definition of "indigent inmate" in CCR section 3000 to its original location. The concept of an indigent inmate as it

pertains to inmate mail is unique such that it has now been included in the general mail definitions in CCR subsection 3133(a)(5). The definition has also been changed for clarification, in response to public comments, to provide that an inmate can qualify for indigent writing supplies and postage only if they have \$1.00 or less in their Inmate Trust Account for 30 consecutive days. The Department agrees that this language is clearer, and offers more latitude than the definition of an inmate being without the funds to pay for a single postage stamp for 30 consecutive days

Section 3130.

Section 3130 is amended to clarify the general mail policy of the Department by removing language that is outdated or repeated elsewhere in the regulations and by adding language that provides a broader overview of the Department's inmate mail general policy. Several changes have been made in the 2nd 15 Day Renote for clarity.

Section 3131.

Section 3131 is amended to remove the requirement that the Director (now the Secretary) must approve every correctional facility's plan of operations for the sending and receiving of inmate mail prior to its implementation. Each institution's plan of operation is intended to delineate the regulations as they pertain to their physical plant. The Department has determined it is overly burdensome to require the Secretary to review each institution's plan, as they are checked for compliance by an audit team on a regular basis.

Section 3132.

Subsection 3132(a) is amended to emphasize that all persons that correspond with inmates within the jurisdiction of the Department are expected to comply with existing mail laws and regulations. The word "policies" was changed to "local rules" in the 2nd 15 Day Renote.

Subsection 3132(b) remains unchanged.

Section 3133.

Existing section 3133 is deleted as the number of persons an inmate may correspond with is now included in Section 3134, General Mail Regulations, and to remove duplicative language already included in Section 3139. The information contained in this deleted section was not sufficient to constitute being in a section of its own, and was relocated for incorporation into General Mail Regulations for improved clarity and consistency.

New section 3133 is relocated from existing section 3147, and amended in its entirety. For clarity and simplicity, the existing text of section 3147 is deleted, and is rewritten as new section 3133 to improve the overall clarity of the Mail Article by placing the definitions of types of mail early in the mail regulations, by providing a larger scope of definitions of various classes and types of mail, as well as to delineate the disposition of various types of incoming and outgoing mail.

New subsection 3133(a) in the originally submitted revision text has been amended for clarity and accuracy. This subsection continues to provide definitions for the various classes and types of mail that are consistent with the various types of mail handled by the USPS. All mail, not just inmate mail that is received at the facility mailroom, will be delivered within the 7 calendar day requirement. The 7 day time frame has been selected as that time frame has, over the years, been the time frame that most consistently can be met by most institution mailrooms, given the volume of mail and available resources to process that mail.

New subsection 3133(a)(1) has been amended in the 2nd 15 Day Renotice to clarify that all First-Class mail shall be “delivered to the inmate”, not just “issued”. Further, such mail is to be delivered to the inmate within seven days of receipt “at” the mailroom, not “from” the mailroom.

New subsection 3133(a)(3) has been amended in the 2nd 15 Day Renotice to explain what constitutes a “known office of publication”. This is important in the event a publication is deemed to contain material prohibiting it from being allowed into an institution, such that a letter would have to be sent to the publisher informing them their publication is being returned and why, and their appeal rights. A particular publication can have more than one publishing office, but the USPS has deemed the office that contains the circulation records of the publication to be the central nerve of the company and hence to be held accountable should circulation records have to be inspected.

New subsection 3133(a)(4) has been amended for clarification as a result of public comments to expand the exception for type of package services an inmate may receive from personal correspondents from just “parole clothes” to now include special purchase “health care appliances”. This subsection will also provide the stipulation that these two types of special packages must be clearly marked on the outside of the package with either “Parole Clothes” or “Health Care Appliance”.

New subsection 3133(a)(5) has been amended in the 2nd 15 Day Renotice to clarify that the definition of an indigent inmate as provided in this section does not pertain to just section 3133, but to the entire mail article. This definition has been selected as it most closely accommodates those inmates who are truly without funds, keeping in mind that most inmate job assignments pay little or even no compensation. The 30 day wait period is important as many inmates do receive amounts of funds from correspondents, and the State is responsible to marshal its resources.

New subsections 3133(b)(1) & (b)(2) have been added to establish the procedures for processing all incoming and outgoing inmate mail. These requirements have been delineated in the regulations to closely follow the USPS regulations.

New subsection 3133(b)(3) has been amended for consistency to include the word “non-confidential” in the first sentence, as this is the type of mail that is being addressed elsewhere in this article. The distinction between non-confidential versus confidential mail is important in the way that each is inspected for contraband. This subsection was added to establish the criteria for inspecting incoming packages and non-confidential mail to more closely align with the USPS regulations.

New subsection 3133(b)(4) has been added to establish that pre-approved vendor approved labels are not required for incoming books, magazines, or newspapers, which more closely aligns with the USPS regulations.

New subsection 3133(b)(5) has been deleted in the 2nd 15 Day Renotice as it is duplicative language contained in subsection 3133(b)(3).

New subsection 3133(c) has been amended for clarification. While most legal mail is confidential in nature, it is incorrect to assume that it all will be confidential. The intent of this subsection is to discuss the processing of inmate trust account withdrawals that are enclosed in confidential mail. As such, the title of the subsection has been amended to clarify the particular process to be discussed. Confidential mail is typically sealed once an officer has inspected it. However, the Trust office process requires that the envelope must be left unsealed, and a process is also described for inmates who do not want to leave the first envelop unsealed. The envelope is left unsealed so that a voucher (check) to pay for a filing fee or other cost can be enclosed after the trust account withdrawal has been processed. The revision date of CDC Form 193 has been included in the 2nd 15 Day Renotice.

New Subsection 3133(d) has been added to set forth the process of handling inmate mail that the USPS is returning to the institution as undeliverable. Mail can be returned to an inmate as undeliverable for a variety of reasons, and it is important to set forth the guidelines to promptly and properly deliver returned mail back to the inmate, and to ensure that contraband has not somehow been introduced into that mail prior to being returned.

New subsection 3133(e) has been amended to add the requirement that an institutional mailroom must, within a specified number of days, notice an inmate that an item of First Class Mail has not been accepted for mailing. The notice must be sent to the inmate and stipulate the reason why it has been detained, and include the disposition. Subsection 3133(e) has been added to discuss how unmailed correspondence must be handled, and to emphasize that inmate mail must be promptly mailed or returned to the inmate. The 5 day time limit was selected as it is deemed a reasonable time frame to require a mailroom to process returned mail to ensure the inmate does get it back, or at least notification regarding the delay.

New subsection 3133(f) has been amended for clarification to provide a distinction in the treatment of newspapers that are delivered by courier to an institution versus newspapers that are delivered by the USPS when an inmate is absent from the institution. Courier delivered newspapers are not forwarded or held for an inmate that is absent from the institution for more than 72 hours. USPS delivered newspapers will have a forwarding address affixed to the newspaper, which shall be returned to the USPS for processing. Subsection 3133(f) has been added to the regulations to describe the process of forwarding mail to an inmate that has been transferred. This would include all types of mail, not just newspapers. This is an important subject as inmate transfers between institutions do occur and guidelines do need to be developed to ensure there is standardization within all institutions. The Department recognizes the requirement that inmate mail must be delivered timely, even if the inmate is temporarily or even permanently away from the institution. Also, frequently staff would return mail to the addressee when an inmate had simply been transferred or released to parole. Staff must make every effort to locate the inmate to timely forward their mail.

New subsection 3133(g) has been amended for consistency and clarification. As discussed above, not all legal mail is confidential in nature. It is the intent of the Department to set forth in these regulations the process for forwarding confidential correspondence in a timely fashion to a transferred inmate as such mail may be from a court, which is why this subsection was added to the regulations.

New subsection 3133(h) has been added to confirm that mail will be held at the institution mailroom for a specific time frame in an inmate's absence. One week was selected as generally in a long term court proceeding the inmate would be held at the county facility nearest the courthouse during the week and returned to the institution for the weekend, where they would receive all their mail.

Section 3134.

Existing section 3134 is relocated and renumbered to section 3138 to provide a more orderly and consistent sequence of the sections within the Article on Inmate Mail.

New section 3134 is relocated from existing section 3138, and amended in its entirety to provide a broad range of information on a variety of current general mail regulations beyond the disposition of mail, such as what items can be sent in to inmates, metered envelopes, the inspection of mail, contests, and other general mail regulations. This information is now also presented earlier in the regulations to provide clarity and consistency in the overall mail regulations.

New subsections 3134(a)(3), (6), (7), and (9) in the originally submitted revision text have been amended for clarity and accuracy. Subsection 3134(a) has been added as it details a number of enclosures that correspondents can send to inmates. Although this list is not all inclusive, it represents the most common enclosures sent in by correspondents. Photographs are the most common enclosure, although the Department must be very careful in restricting the type of photo that can be sent in as some, such as Polaroid's, can have small amounts of contraband secreted within. Subsection 3134(a)(3) has been amended to more accurately specify that blank greeting cards cannot include attachments or stamps for safety and security reasons. Subsection 3134(a)(6) has been amended by being removed, as it was repeated in subsection 3134(a)(7), which has been clarified to include tablets of writing paper, noting the restriction on cotton paper for security reasons. Subsection 3134(a)(9) has been amended to include colored legal paper that may be required by a court.

Subsection 3134(a)(10) has been added for clarification. Even though subsection 3134(a) lists items that can be enclosed in First Class Mail, and indicates that list is not all-inclusive, there have been sufficient public comments to warrant adding to the list the additional items noted in subsection (10).

Subsection 3134(a)(11) has also been added for clarification. The Department has long been aware that there have been some correspondents who have introduced contraband into the institution within books of stamps included in correspondence or on the backs of stamps. The proposed regulatory requirement that stamps only be purchased and sent directly from the USPS elicited the most public comments, requesting that correspondents be allowed to send inmates stamps as in the past. The Department determined that they would not proceed with the proposed revision to have stamps only sent in by the USPS, and has now proposed the stipulation that a correspondent can send up to 40 postage stamps enclosed in a letter. The total of 40 stamps was selected, as was 40 postage embossed envelopes in (a)(4) above, as 40 stamps is two books of stamps and is deemed a reasonable number of stamps for a correspondent to send to an inmate.

New subsection 3134(a) has been amended for clarification and accuracy to include the Vendor Package Program where inmates can obtain photo albums, as well as to include the requirement that the Department must notice inmates when any unauthorized mail is returned to the sender. Also, the weight limits for the several classes of mail have been included and mirror the USPS regulations.

New subsection 3134(b) has been added to describe the conditions that correspondents must adhere to when sending an inmate metered reply envelopes. The conditions conform to the requirements set forth in the USPS regulations.

New subsection 3134(c)(4) has been amended for consistency and in response to public comments. New subsection 3134(c) has been added to set forth the guidelines regarding the inspection and processing of incoming and outgoing packages. In the original revision text the Department determined that the mailrooms were to deliver packages, publications, and special purchases to inmates within 14 business days. In the amended text the 14 business days was amended to 15 calendar days, which effectively will mean a quicker processing time for the inmate recipient. Also, this delivery time frame is now extended to all publications, including books, to which the Department will now adhere. Subsection 3134(c)(2) now deletes the reference to section 3190 and the words "departmentally-approved vendors", in the 2nd 15 Day Renote, as they are somewhat ambiguous in this context. Subsection 3134(c)(4) has been amended for clarity, and to provide several examples of what constitutes a holiday season, in the 2nd 15 Day Renote.

New subsection 3134(d) has been added to instruct inmates that they cannot participate in any contests as inmates are not allowed to participate in any form of gambling.

New subsection 3134(e) has been added and amended for clarity by adding several items to the list of allowable inmate manuscripts, such as paintings, sketches, and drawings, but then limiting the list of allowable inmate manuscripts to just those noted in the amended regulations. Inmates who are taking the time to create any of the items listed in this subsection should be recognized that this is their property and it must be treated with respect and handled as if regular mail.

New subsections 3134(f) through 3134(i) will now be deleted from section 3134 and moved into new CCR section 3134.1 entitled "Processing of Publications," as noted in the 2nd 15 Day Renotice. This has been done due to the importance of the subject matter, Processing Publications, and to provide more information about disapproved publications.

New Subsection 3134(f) has been deleted from section 3134 and has been relocated to new section 3134.1 and renumbered to (a). This subsection was previously amended for clarity by including a book distributor as an allowable source by which a third party can order, and have shipped, a publication for an inmate. This subsection is further amended in the 2nd 15 Day Renotice to remove language regarding a centralized list of disapproved publications, as this information is now enumerated in new subsection 3134.1(e). Further, publications must be mailed directly from a book store, book distributor or a publisher for security reasons. Previously they could be sent from an approved vendor, but the frequent introduction of contraband into those publications has eliminated that procedure and thus the elimination of the requirement of an approved vendor label.

New subsection 3134(g) has been added and renumbered to 3134.1(b) to discuss the processing and inspection of magazines and newspapers, and to explain that certain items can be removed without the inmate being notified. These items are typically promotional in nature and on the surface may seem innocuous, but the items or the container/wrapper around it may be deemed contraband pursuant to section 3006. This subsection has been further amended in the 2nd 15 Day Renotice by acknowledging there may be other attachments listed to magazines and newspapers that staff may deem contraband that must be removed.

New subsection 3134(h) has been added and renumbered to 3134.1(c), and amended for clarity with respect to the processing and inspection of incoming books to inmates, and to include any enclosures that might be included within the book. Once again, enclosures might be deemed contraband, and hard book covers must be removed as small amounts of contraband have been secreted in the covers in the past. This subsection has been further amended for clarity in the 2nd 15 Day Renotice.

New subsection 3134(i) has been added and renumbered to 3134.1(d), and amended for clarity and consistency, as noted in the 2nd 15 Day Renotice. When notifying a publisher by letter that their publication has been disapproved for delivery, the letter must not only include the name(s) of those impacted, but also the CDCR number, as well as information on how the publisher can appeal the decision to disallow the publication into the institution. To be consistent with the time frames with which to deliver publications to inmates, the notification letter must be mailed to a publisher no later than 15 calendar days of receipt of a censored publication. Language pertaining to how long a mailroom must keep information pertaining to the disallowance of a publication has been simplified; the only timeframe a mailroom must keep such information is for a seven year period, which is a standard legal time frame for record retention.

New subsection 3134(j) has been added and renumbered to 3134(f) in the 2nd 15 Day Renotice, due to the removal to of subsections 3134(f) – (i), to stipulate that inmates can correspond with as many correspondents as they want, unless restricted elsewhere in this article, Inmates are to be encouraged to correspond with as many family and friends as they have resources and time to do so, to facilitate their rehabilitation back into society.

New subsection 3134.1(e), entitled “Centralized List of Disapproved Publications,” has been added in the 2nd 15 Day Renotice. The information contained in this new subsection is an elaboration of information previously contained in subsection 3134(f). While it is recognizable that a number of publications include content of a sexual nature or describe weaponry, just to name a few of the type of publication content that would be disallowed, the Department is striving to provide consistent guidance statewide as to what is not allowed into the institutions, as well as to provide some relieve for those publishers that would want to appeal the Departments decision to exclude their publication. The decision to send a letter to a disallowed publisher within 15 days is merely to be consistent with other 15 day requirements within this Article.

Section 3135.

Subsection 3135(a) is amended to remove the requirement that all nonconfidential correspondence shall be read by staff, as that requirement is included in subsection 3133(b)(35). Also, exceptions to disallowing disturbing correspondence are no longer allowed, as it has been determined there were few if any such exempted items being considered or reviewed. Finally, language pertaining to documentation of the reasons for withholding mail has been removed, as this information is provided more succinctly in section 3136.

Subsection 3135(b) is amended to provide several changes for format and updated terminology.

Existing subsection 3135(c) is amended, renumbered, and relocated to 3135(e).

New subsection 3135(c) is adopted and is an expansion of the discussion in subsection 3135(b) regarding value judgments pertaining to mail, with detail on the various types of mail that must be disallowed regardless of value judgments of staff to emphasize the safety and security of the institution. While the list of disallowed items is not all inclusive, it is representative of the types of disturbing or offensive comments, such as language that contains escape plans or coded messages that have been attempted to be mailed but cannot be mailed.

New subsection 3135(d) is adopted to expand on the subject of disallowed mail to specifically disallow virtually all obscene material, or any material that would appeal to the prurient interest. The Department acknowledges the difficulty in adopting some standard as to what constitutes obscenity, and further acknowledges the necessity for setting forth such standards to more completely achieve its desired rehabilitative goals for the inmate population. Every effort will be made, however, to be fair and consistent with the application of just what constitutes obscene material throughout the state, as further delineated by the Department providing each institution a centralized list of disallowed publications as set forth in new subsection 3134.1(e). Subsection 3135(d)(7) has been amended in the 2nd 15 Day Renotice to clarify that it is conduct of a sexual nature with a minor that will not allow a publication to enter an institution.

New subsection 3135(e) is relocated from existing subsection 3135(c) and amended for clarity and updated terminology.

Section 3136.

Existing subsection 3136(a) is deleted and new section 3136(a) is added to remove vague language, and to provide direction to staff as to how to notice an inmate of disapproved mail. Incoming or outgoing mail that is clearly in violation of sections 3005 or 3135 can easily be disapproved by staff at the Correctional Captain level. Such mail that is not easily identifiable as being in violation must be reviewed at a higher level, an important requirement to protect the rights of both the inmate and their correspondent. Additional changes have been made in the 2nd 15 Day Renote for clarity.

Existing subsection 3136(b) is deleted and new section 3136(b) is added to remove vague language, and to delineate actual time frames of how long disapproved mail must be retained, particularly if a lawsuit results due to the disapproval of mail, before it can be disposed. Additional changes have been made in the 2nd 15 Day Renote for clarity, and to provide simplification with the document retention policy pertaining to disapproved mail, as well as to set out that the Form 1819 and supporting documents shall be maintained for a minimum of 7 years. This time frame was selected as it is a generally accepted legal time frame within which to initiate legal action and for document retention.

Section 3137.

Section 3137(a), (b), and (c) are amended for clarification and changes of updated terminology. For example, the word "Director" is now changed to "Director of the Division of Adult Institutions (DAI)". Additional changes have been made in the 2nd 15 Day Renote for clarity.

Section 3138.

Existing section 3138 has been relocated and renumbered to section 3134, and has been amended in its entirety.

New section 3138 has been relocated from existing section 3134, and is renumbered and amended in its entirety to expand upon the writing materials and prepaid envelopes that an indigent inmate is allowed as well as the restrictions that are placed on indigent inmates. There is also expanded language providing direction to staff regarding indigent inmate's access to the courts.

New section 3138(a) has been added to clarify the extent of writing supplies and envelopes with postage that will be supplied to an indigent inmate, along with the restriction that the indigent inmate cannot trade or transfer those supplies with other inmates. A total of 5 indigent envelopes were selected as the Department determined this would be a sufficient amount of writing material and envelopes for an indigent inmate to maintain ties with family and friends.

New subsection 3138(b) has been amended for accuracy regarding the process by which an indigent inmate may mail correspondence weighing more than one ounce. ~~and~~ The originally amended text has been removed as it is duplicated in subsection 3138(g).

New subsections 3138(b)(1) and (2) have been amended for clarity and have been renumbered to subsection 3138(b). Indigent inmates must be allowed to have access to the courts or to the Attorney General, and they may request to be allowed to mail any type of correspondence that weighs more than one ounce.

New subsection 3138(c) has been added to explain the process of an indigent inmate that is mailing foreign correspondence. This exact language was formerly included in section 3134 and remains accurate, but was included as new language for ease of numbering.

New subsection 3138(d) has been added to clarify that indigent envelopes become the property of the inmate, and they are allowed to utilize them regardless of their current financial status.

New subsection 3138(e) has been added to clarify that only the Trust Office is to process an inmate's request for indigent envelopes. This information in the regulations puts the inmate on notice of the appropriate office to submit their request for indigent as the Trust Office maintains the inmates trust accounts.

New subsection 3138(f) has been added to stipulate that unauthorized inmates caught using an indigent inmate envelopes shall be subject to the disciplinary process. Use/theft of an indigent envelope by an unauthorized inmate would be tantamount to the theft of actual postage stamps from another inmate.

New subsection 3138(g) has been added to clarify that an indigent inmate must use their indigent envelopes when corresponding with their attorney or other confidential correspondent. The inmates own attorney does not automatically warrant privileged treatment in the same way that the courts or the Attorney General does.

New subsection 3138(h) has been added to expand beyond subsection 3138(g) in that an indigent inmate shall have free and unlimited mail to any court or the Attorney General. The Department recognizes that it is the law that all inmates have access to the courts and the Attorney General. Language contained in subsection 3138(h)(1) has been struck that is duplicative of other language contained in the section.

New subsection 3138(i) has been added to establish that each institution shall establish local procedures for the issuance of writing supplies to indigent inmates, as this may vary from institution to institution due to their physical plant.

Section 3139.

Section 3139 title is amended to include parolees and probationers, in addition to other inmates, with which inmates may correspond.

Initial paragraph of section 3139 is deleted as this language is vague and is now covered much more extensively in a major expansion of the subject matter in this section.

Subsection 3139(a) is deleted and new section 3139(a) is added to remove vague language and to clarify what approval's are needed, and from whom, for inmates, parolees, and probationers to correspond with each other, as well as to provide updated terminology. The necessary approvals would require a thorough file review of the inmates past and current gang related activity to determine if they should be allowed to correspond with any of the persons listed in this subsection, and thus not compromise the safety and security of the institution and the public.

Subsection 3139(a)(4) has been amended for clarity and accuracy. Former inmates that have been discharged from the custody and jurisdiction of the Department will continue to be allowed to correspond with current inmates or parolees. Although this restriction was included in the revision text, the Department has determined that it is not appropriate to restrict individuals that have successfully discharged from the Department in their correspondence, and that tracking such individuals would be too expensive and time consuming.

Subsection 3139(b) is deleted and new section 3139(b) is added to again remove vague and outdated language, and to begin to expand upon the process by which an inmate must obtain permission to correspond with other inmates, parolees, or probationers. This subsection has been amended in the 2nd 15 Day Renote for clarity, to remove a form title that is not an authorized CDCR form, and to delineate the criteria

by which inmates may correspond with other inmates, parolees, and probationers. While there may be some other reason why an inmate may not be allowed to correspond with the persons listed in the subsection, such as planned criminal activity, the Department's experience has been that person's associated with a gang or terrorist related group are more intent on planning some kind of criminal activity.

Subsection 3139(c) is adopted to expand upon the process involved when an inmate initiates a request for correspondence approval, and the requirements for processing an inmate's Request for Correspondence Approval, Form 1074, (Rev. 08/87), both if the request is approved or if it is denied. This approval process is laid out in great detail in this subsection, noting there are 10 steps in the process of approving or disapproving such correspondence requests. This information was previously not laid out in any such detail, resulting in the various mailrooms conducting their review process differently, with the possibility of compromising some aspects of an institutions security. The primary purpose of listing the 10 steps is to ensure the review process occurs and is well documented, informing the inmate in writing of the outcome of the review, and the retention process of that documentation. This subsection has been amended in the 2nd 15 Day Renotice to also remove a form title that is not an authorized CDCR form. Subsection 3139(c)(3) has been amended in the 2nd 15 Day Renotice to delineate that a particular form will be retained in a C-File or Field File.

Subsection 3139(d) is adopted to clarify that there are no limitations on the number of times inmates, parolees, or probationers can correspond with one another, which is an expansion of information that was previously contained in section 3133.

Subsections 3139(e) through 3139(i) are adopted to provide additional information or restrictions on correspondents located in security housing units, correspondence between family members, inmate transfers, and unapproved correspondence, to ensure the safety and security of the institution and the public. "Security" was changed to "Services" in the 1st 15 Day Renotice for accuracy when listing "Psychiatric Services Unit". Subsection 3139(e) has been amended in the 2nd Day Renotice for clarity by emphasizing that the restrictions on the correspondence discussed in this subsection are limited to the segregated housing units listed. Subsection 3139(f) has been amended in the 2nd Day Renotice for clarity, and to clarify that correspondence as being discussed in this section can be restricted if it violates other aspects of the regulations.

New subsection 3139(j) is adopted to provide amended information that was previously included in section 3140. This information is being incorporated into section 3139 as it also deals with correspondence between inmates, specifically a related group of inmates known as former inmates. This subsection is amended in the 2nd 15 Day Renotice by removing language that is duplicative of CCR section 3139(a).

Section 3140.

Existing section 3140 title is deleted and renamed to "Funds Enclosed in Correspondence" to provide information about how staff are to process funds that are enclosed in correspondence, an important subject that is not currently addressed in existing regulations.

Initial paragraph in section 3140 is deleted as this information is more appropriate for inclusion into discussion of correspondence between inmates located in section 3139.

Subsection 3140(a) is adopted to identify the types of funds that can be mailed to an inmate, how the funds are to be handled, and how to properly notify the inmate that funds were received for placement into his trust account. The type of funds an inmate may receive, such as a check or a money order, are detailed along with the requirement that they must be made out to the Department with the inmates name and number

included on the face of the check to facilitate the deduction for victim restitution prior to the remaining amount being deposited into the inmates trust account.

Subsection 3140(a)(2) has been added to acknowledge that funds can be received from another inmate, provided they meet the criteria set forth in section 3139.

Subsection 3140(a)(3) has been amended from the originally proposed text by its removal from the proposed revision text. The Department has reevaluated the previous requirement that funds can only be sent to an inmate by family members, and has determined the requirement is too restrictive. The Department received numerous comments on this restriction and therefore lifted that restriction, and described of turning the correspondents envelope into a receipt noting that funds had been received.

Subsection 3140(a)(4) has been amended in the 2nd 15 Day Renotice for clarity and accuracy, and to eliminate language that is vague. It is important to note in the regulations that an inmate shall be noticed in writing that cash was received in their mail and that it is being returned to the sender. Money is considered contraband pursuant to subsection 3006(b), and cannot be sent into the inmate. Cash is encouraged to not be sent into the institution to reduce the temptation any mailroom staff may have, and cash is not processed the same as checks as the Department does not provide training to staff about how to identify counterfeit money.

Subsection 3140(a)(5) has been added to provide a standardized procedure statewide for how staff are to account for the days remittances, which will assist in the deposit process to each inmates trust account.

Subsection 3140(b) is adopted to describe the eligibility process that inmates incur when they receive government checks such as social security, welfare, or tax refund checks. Inmates lose much of their citizenship rights once they are incarcerated, including their right to generally receive a variety of government checks. However, the Department will not automatically just return such checks, but instead has laid out in subsections 3140(b)(1) through (b)(3) the requirement that an institution shall appoint a facility representative who will assist outside agencies in determining an inmates eligibility to receive such checks, on a case by case basis. As such, the eligibility process is not one where all government checks are automatically returned, but rather considered for possibility for receipt by the inmate.

Subsection 3140(c) is adopted to describe the process involved when an institution receives a government check for an inmate that is deceased or has been discharged from the department. It is possible that correspondence for an inmate that contains a government check might be received where the inmate has been deceased, discharged, transferred, or paroled. The steps are laid out in subsection 3140(c) through (c)(2) as to how to return that correspondence to the sending agency, or to the correct parole office. Every effort is to be made to locate the inmate to ensure that if possible a determination can be made to determine the inmate's eligibility to receive the government check.

Subsection 3140(d) is adopted to acknowledge that not all funds received will be in the form of a money order or certified check, and must be processed differently. Money orders, checks, or certified checks will only be released for spending by the inmate once the funds have cleared the bank, to protect the Department from financial instruments that do not sufficient funds.

Subsection 3140(e) is adopted to provide a strict return policy for correspondence that is received that contains foreign currency. It is important to note there is a distinction between domestic correspondence received with cash versus foreign correspondence received with cash. Domestic correspondence containing cash merely has the cash returned to sender, with the correspondence to be forwarded to the inmate, whereas

foreign correspondence containing cash is returned to sender in its entirety. The Department contends that returning cash alone to a foreign correspondent would make it much more likely to be vandalized, and it is incumbent upon all inmates to inform their correspondents of all mail rules and regulations.

Section 3141.

Existing subsection 3141(a) is deleted as the language is vague as well as duplicative.

Existing subsection 3141(b) is renumbered to 3141(a) and amended for clarity.

New subsection 3141(b) is adopted to stipulate that confidential mail is not limited to First Class mail standards, and that it will be processed regardless of weight or postage class. This is to emphasize that confidential mail carries more significance than regular correspondence as it may be legal in nature and therefore must be processed and delivered to the inmate.

Existing subsection 3141(c) is amended to include updated terminology and to provide more specific information as to what qualifies as a confidential correspondent. Subsection 3141(c) has been further amended for consistency and accuracy in the 2nd 15 Day Renote. As confidential mail may be correspondence from the courts or the Attorney General's office, it cannot be restricted in the same manner that regular First Class mail can be restricted. Subsection 3141(c)(7) has been amended for clarity by establishing that an inmate may correspond confidentially with all members of a foreign consulate. Subsection 3141(c)(8) has been amended for accuracy by including the Department's Ombudsman's Office in the list of persons that an inmate may correspond to confidentially, and for accuracy to reflect the changes in division names or to titles to current names or titles. Subsection 3141(c)(9) has been amended in the 2nd 15 Day Renote to clarify what constitutes a legitimate legal service organization. The original 4 legal organizations contained in the original text remain, although they are formatted differently for clarity, and the new legal organization entitled "California Appellate Project" has been added.

New subsection 3141(d) is adopted to provide additional information about how incoming confidential mail must be addressed, and the steps staff must take if there is a question as to the legitimacy of incoming confidential mail. The Department has experienced an increase in the number of confidential correspondents that are not truly confidential in nature. This new language will provide staff an extra resource to ensure that such confidential mail is truly confidential, or merely posing as such to escape closer scrutiny.

Section 3142.

Section 3142 is amended for clarity.

Subsection 3142(a) is amended to stipulate that the address of an attorney that an inmate is mailing confidential mail to must match the address listed with the State Bar. Increasingly inmates have been trying to send correspondence as confidential when it is not. If the inmate is unsure of the correct address of an attorney, they can direct regular correspondence to their attention to get the correct address.

Subsection 3142(b) is amended for clarity and updated terminology, noting that an inmates identification number must be included in all outgoing correspondence. This had not been included in existing test. For security reasons it is mandatory that all outgoing mail include the inmate's identification number. This informs the recipient of the mail that it is from an inmate incarcerated in a state prison. Also, it is possible to have two or more inmates's incarcerated in the same housing unit with the same last name, so it is important to have the identification number to distinguish between them.

Also, inmates have been using the confidential mail process inappropriately by mailing it to nonconfidential correspondents, and staff has not caught the lack of the identification number. This added language also notifies staff of this requirement.

Subsection 3142(c) is amended for clarity.

Existing subsection 3142(d)(1) through 3142(d)(4) is deleted as the process for inspecting and processing outgoing confidential mail has changed as set forth in new subsection 3142(d).

Subsection 3142(d) is amended to reflect new procedures for the inspection and processing of outgoing inmate confidential mail. Subsection 3142(d) has been further amended for clarity to provide information to staff on the correct handling of confidential mail to ensure that the contents of the mail are sufficiently inspected but are not read due to their confidential nature. While much of the original text of this subsection is now contained in new subsection (d), there have been sufficient security changes in the process to warrant describing it as new language.

New subsection 3142(e) is adopted to describe the procedure for handling prohibited material that may be located in outgoing confidential mail. Prohibited material might be some kind of coded letter that stood out as not being ordinary correspondence, or an escape map. No description of what constitutes prohibited material was provided in the text, as it is difficult to anticipate just what form it would take. But an experienced officer would recognize such material for what it is, and this text provides them the authority to confiscate the prohibited material.

Section 3143.

Existing section 3143 is amended to add language stipulating that an attorney's address must match that listed with the State Bar. Language is deleted from section 3143 that is no longer relevant or current. Additional information is added to this subsection describing how incoming confidential mail must now be processed. Changes to the processing and handling of confidential mail have become necessary due to increasing abuse of this type of mail for gang related activities.

New subsections 3143(a) and (b) are adopted to describe the process by which staff shall deliver confidential mail to an inmate, and how the inmate will acknowledge receipt in a designated logbook of such mail. A logbook is kept for security reasons to keep a running log of just who is sending an inmate confidential mail, and is included in the text to provide standardization for all mailrooms statewide of this requirement.

Section 3144.

Section 3144 is amended for clarity and to delete language that is duplicative within the section. Section 3144 has been further amended for accuracy and clarity. The Department has determined that all confidential mail, particularly incoming confidential mail, must be opened to be inspected for contraband. Therefore the option of opening or not opening the mail for inspection purposes has been removed.

Subsection 3144(a) remains unchanged.

Existing subsection 3144(b) has been relocated and renumbered to new subsection 3144(c).

New subsections 3144(b) through subsection 3144(b)(4) are adopted to provide continuity in the discussion of the inspection of confidential mail and the actions for suspension of confidential mail privileges that are required if incoming confidential mail is deemed inappropriate or contains contraband. It should be noted there are two types of violations being discussed in this subsection. The first are non-serious violations, which would include something as simple as enclosure of some kind of contraband or

the misrepresentation of the sender's identity. Of course, if the enclosure of contraband was something as serious as drugs, that could be chargeable as a felony and would be considered a serious violation. A serious violation is those that could be charged as a felony that actually jeopardized safety and security. Amendments have been made in the 2nd 15 Day Renotice to clarify that is the Director of DAI, not the Secretary, who must be petitioned for reinstatement of confidential mail privileges.

New subsections 3144(c) through 3144(c)(2) are adopted from existing subsection 3144(b) and remain unchanged in their entirety. Subsection 3144(c)(1) has been further amended to reflect the change in the title of the leadership of the Department to Secretary. Amendments have been made in the 2nd 15 Day Renotice to clarify that is the Director of DAI, not the Secretary, who must be noticed if any case of misrepresentation of identity indicates a violation of the law.

Section 3145.

Section 3145 remains unchanged.

Subsection 3145(a) is amended for clarity and updated terminology.

Subsection 3145(b) is amended to reflect a simplification in the process by which confidential mail is returned to sender, and hence to delete language that reflected a more complex process. This subsection is further amended in the 2nd 15 Day Renotice for clarity regarding the disposition of enclosures in confidential mail. Enclosures included in confidential mail are not allowed into the institution without being examined for security reasons. Pursuant to subsection 3191(c), they can be returned to the sender at the inmate's expense, donated to charity, or rendered useless and destroyed.

Subsection 3145(c) is amended for updated terminology, and to provide clarification of what circumstances allow for inclusion of mail into an inmates central file. This subsection has been further amended in the 2nd 15 Day Renotice for clarity to explain the type of mail that an inmate's counselor might include in an inmate C-file. Due to the voluminous size of some inmates C-file, care is given to not just capriciously include any correspondence an inmate may request to be included in their C-file, but to limit such items to the criteria set forth in subsections 3145(c)(1) through (3), as well as to allow an inmates counselor some discretion as to whether a certain item is relevant and should be included.

Section 3146.

Section 3146 remained unchanged at the time of the initial rulemaking filing. However, this section has now been amended to place an additional requirement on the Department to ensure a translation of a correspondence occurs timely, and if not the correspondence is delivered to the inmate untranslated. That additional language was not show as underline (added language) in the previous regulations, and it has been dotted underlined to allow the reader to note the additional translation requirement on the Department.

Section 3147.

Existing section 3147 is relocated and renumbered to section 3133, and amended in its entirety.

PUBLIC HEARING COMMENTS:

Public Hearing: Held May 11, 2007, at 10:00 at the Department of Water Resources Auditorium, Sacramento.

SUMMARIES AND RESPONSES TO ORAL COMMENTS AT THE PUBLIC HEARING

There were three commenters present at the Public Hearing who presented comments.

COMMENTER #1:

Comment A: Commenter states that the Department currently requires an institution pre-approved vendor label affixed to a package containing publications. If the Department no longer continues that requirement, anyone can send any publication in an envelope to an inmate, and write on the label that it is from a vendor.

Accommodation: None.

Response A: The Department acknowledges that not requiring a pre-approved vendor label does constitute a potential problem. However, if inmates and their personal correspondents are able to subscribe to or order publications from any source, then there will be less need to circumvent the regulations. The best the Department can do at this time is to stay vigilant with regards to the address and return labels on these publications. The Department has already noticed all mailroom staff that institutions cannot require incoming books, magazines, or newspapers to have an institution pre-approved vendor label affixed to the packaging. Any institution who is requiring such a label is in violation of Departmental policy.

Comment B: Commenter states that requiring stamps to only be ordered from the internet and sent to inmates is a good idea, because it will cut down on some of the contraband that is being sent in with the stamps.

Accommodation: The Department will not require that postage stamps can only be purchased from the USPS via the internet. The Department will alter language on this issue to state that postage stamps can be sent in by correspondents as has been done in the past. The interests of those who correspond with inmates had to be weighed against the evidence that contraband is introduced through postage stamps.

Response B: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue to state that postage stamps can be sent in by correspondents. The number of postage stamps that can be sent in will be limited to forty unless there is a rate change, at which point 40 stamps will be allowed at the old rate, and forty stamps at the amount needed to equal the new rate.

COMMENTER #2:

Comment A: Commenter states that the proposed regulations in subsection 3142(d) requires staff to search every outgoing confidential envelope, which violates the rights of both inmates and their confidential correspondents. Commenter also states that this language is in conflict and is inconsistent with language contained in section 3144, which states that outgoing confidential mail may be inspected with or without opening the mail for cause only.

Accommodation: The Department contends that while it is imperative to inspect outgoing confidential mail, conflicting language will be changed.

Response A: The Department issued a 15 Day Renotice on January 31, 2008 that changes conflicting language.

Comment B: Commenter states that proposed language in section 3144 imposes unnecessarily severe sanctions on attorneys for non-serious violations, and does not define what constitutes a non-serious violation. The six month suspension of mail privileges is wildly disproportionate to the violation.

Accommodation: None.

Response B: The Department contends that a non-serious mail rule violation, for the purposes of confidential mail, means a violation of the inmate mail regulations that is not chargeable as a felony but that is nevertheless unlawful. Examples of a non-serious

mail violation are an enclosure of physical contraband into the confidential mail, or a misrepresentation of the sender or addressee's identity. These violations tend to impede prison security and thus warrant administrative action. The Department will not suspend confidential mail privileges based solely on an inconsequential error or omission that does not compromise prison security and does not suggest intent to violate the law.

Comment C: Commenter states that section 3145 unnecessarily interferes with an attorney's right to correspond confidentially with their client, and it conflicts with section 3143 which states that staff shall not read any enclosed material in confidential correspondence.

Accommodation: The commenter is correct and the conflicting language in proposed CCR Section 3144 will be deleted. Confidential mail and any applicable enclosures can only be inspected for cause and in accordance with the process outlined in the proposed language of CCR Section 3144.

Response C: The Department issued a 15 Day Renotice on January 31, 2008 that changes conflicting language.

Comment D: Commenter states that the proposed regulations should have a separate section entitled 'Processing Books, Magazines, and other Publications' due to the constitutional importance of those materials.

Accommodation: The Department agrees, and new section 3134.1 has been established for this information. ~~None.~~

Response D: The Department has now established new section 3134.1 entitled "Processing of Publications, as this material is sufficiently important to warrant being in a separate section.

Comment E: Commenter states that they object to the use of local operating procedures to the extent that they allow an institution to create changes to the processing of mail. Local operating procedures should require approval by the Secretary.

Accommodation: None.

Response E: Once the regulations have been codified, the Wardens will not have the ability to create an "Operational Procedure" that restricts, contradicts, or nullifies these regulations. Due to the differences in physical plant in CDCR's institutions, a Department Operations Manual (DOM) supplement can be created in order to answer local issues for things like the days and hours of mailroom operation; where mailbags are picked up by custody staff and returned; location of mailrooms; how inmates are informed of local mail practices; etc.

It is the Department's intent that all of the DOM supplements be reviewed and approved within 180 days of the regulations being codified and implemented. Audits of the mailrooms and their procedures are part of the annual audits.

Comment F: Commenter states that while they are in agreement that a Captain can authorize the disallowance of mail that poses a danger, only the Warden's office should be empowered to make discretionary censorship decisions.

Accommodation: None.

Response F: The Department responds that Title 15 sections 3135 and 3136 assign authority for local institutions to disapprove written materials. These sections provide that a correctional or facility captain can disapprove materials that, under our Departmental regulations, are contraband or are disturbing or offensive

correspondence. They also provide that a Warden or a Chief Deputy Warden has discretion to disapprove material that is not in clear violation of the regulations. Such assignments of authority are lawful and are consistent

Comment G: Commenter states that it is important that publishers be given adequate notice of any material that is rejected for distribution to the inmate population, and that waiting up to 14 business days to notice the publisher is entirely too long. It would be more appropriate that a letter be sent to the publisher within three business days, explaining why the publication was denied, and explaining the publisher's right to appeal.

Accommodation: The Department will amend the fourth sentence of Title 15 section 3134(i) as follows: "The letter must be sent within 15 calendar days of the determination to censor the book, magazine, or publication."

Response G: The Department responds that there is no time limit under the law for when a prison must send a notification to a publisher that its publications have been rejected from entering into the prison. Fifteen days is not too long to provide this notice to the publisher because the prisons often need this full period to record all publications that are rejected and to prepare an adequate notification. The Department nevertheless agrees to change its response time for a notification from 14 business days to 15 calendar days for consistency with others sections of the Mail regulations, as noted in the 15 Day Renote filed January 31, 2008.

COMMENTER #3:

Comment A: Commenter states that recently the Pennsylvania courts ordered that all legal mail be opened only in front of the inmate, and that it cannot be opened and then passed along or held. The Department should mirror this policy before the California courts require it.

Accommodation: None.

Response A: The Department responds that in CCR section 3144, confidential mail will be opened and inspected for contraband in the presence of the inmate addressee. This provision follows all the applicable federal and state law.

Comment B: Commenter states that all mail should be delivered to an inmate within 7 days of receipt at the institution. Also, religious mail that does not have a specific mailing label on it should be given to the appropriate Chaplain and denomination that the mail reflects.

Accommodation: See the 15 Day Renote dated January 31, 2008.

Response B: The Department contends that the mailrooms are expected to deliver all mail, not just to inmates, but to staff also. Commenter is advised that all First Class mail shall be delivered within 7 calendar days, as noted in the 15 Day Renote filed January 31, 2008. Also, mailrooms are directed that religious mail that does not have a specific mailing label on it is to be directed to the appropriate Chaplain and denomination that the mail reflects.

Comment C: Commenter states that too many people of lower economical status do not have access to a computer or even a credit card in order to send stamps to an inmate. The Post Office has a process whereby stamps can be purchased at the Post Office and they will send the stamps directly to the inmate.

Accommodation: The Department will not require that postage stamps can only be purchased from the USPS via the internet using a credit card. The Department will alter language on this issue to state that postage stamps can be sent in by correspondents as has been done in the past.

Response C: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue to state that postage stamps can be sent in by correspondents as has been done in the past.

Comment D: Commenter states that section 3134 fails to provide for the receipt of many religious items that should be approved for inmates by Chaplains.

Accommodation: None.

Response D: The Department contends that these regulations do not allow packages to come into inmates from personal correspondents. Therefore the packages for these types of items are either a special purchase, a vendor package, or come in through a Chaplain's office. The mailroom does not handle the packages for special purchases or the vendor packages. Packages addressed to a Chaplain would not be opened, but would be delivered to the Chaplain who would have control over, delivery of, and documentation of the contents.

Comment E: Commenter states that it is not right that there should be any prohibition against sending an inmate money. If a member of the public learns of an inmate with a hardship and wants to send in a little money, they should be allowed to.

Accommodation: The Department has made the decision to remove this stipulation. The belief is that there are sufficient procedures in place to monitor and impede, for example, the payment of drug debts from an inmates' fund.

Response E: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue that allows monies to be sent in by non-family members.

Comment F: Commenter states that the Department lacks the capacity to translate all correspondence from foreign countries. As such, there are many examples of inmates that cannot correspond with their families as mail that cannot be translated will typically not be forwarded to an inmate.

Accommodation: See the 15 Day Renotice dated January 31, 2008.

Response F: The Department has imposed the requirement on itself that if staff are unable to translate a letter and its contents with 20 days of notice to the inmate, then it shall be delivered untranslated to the inmate.

SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:

COMMENTS #1:

Comment A: Commenter states that restricting correspondents of inmates to only be able to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a phone, much less have access to a computer or the internet, or they lack the skills necessary to make on-line purchases. As such, many inmates who receive stamps now will not get them again. Also, the USPS website charges a dollar per order, and if only 40 stamps can be sent in at a time that can be expensive. In the alternative, postage can be purchased by use of a USPS prepaid mailer where a check or money order will result in the stamps being mailed directly to the inmate. This language should be included in the regulations if one is just going to just be able to order from the USPS.

Accommodation: The Department will not require that postage stamps can only be purchased from the USPS via the internet using a credit card. The Department will alter language on this issue to state that postage stamps can be sent in by correspondents as has been done in the past.

Response A: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue to state that postage stamps can be sent in by correspondents as has been done in the past. The number of postage stamps that can be sent in will be limited to forty unless there is a rate change, at which point 40 stamps will be allowed at the old rate, and forty stamps at the amount needed to equal any new rate.

Comment B: Commenter states that many inmate families do not have a credit card to make on-line purchases, or would not want to use a credit card to make on-line purchases for fear of credit card fraud.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response B: The use of credit cards solely to purchase stamps will no longer be a requirement. Also, see Commenter #1, Response A.

Comment C: Commenter states that the Department is being restrictive to the public by only allowing them access to one vendor to purchase stamps from, when they can purchase books and periodicals from any vendor that does mail order business – on-line or not, credit card or not.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response C: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment D: Commenter contends that the Department is infringing on constitutionally protected free speech by restricting stamp purchases to only the USPS vendor, when other vendors have customized individual expressions. The cost of owning a computer and paying for the internet should be included in the Fiscal Impact Assessment.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response D: The requirement has been removed. No correspondent will be required to purchase a computer. Also, see Commenter #1, Response A.

Comment E: Commenter contends that the Department is unreasonably limiting the number of stamps that an inmate may possess at one time to 40 stamps, regardless of the face value of the stamps, which will be awkward to comply with whenever there is a price increase.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response E: The number of postage stamps will be limited to 40 unless there is a rate change, at which time an inmate will be allowed 40 stamps at the old rate and 40 stamps at the amount needed to equal the new rate. Also, see Commenter #1, Response A. In addition, the USPS now sells “Lifetime” or “Forever” stamps that remain good for delivering First Class Mail even after a rate increase.

Comment F: Commenter states that limiting stamp purchases to only the USPS will ultimately be ineffective at blocking contraband, because anything small enough to hide beneath enclosed postage stamps can just as easily be concealed behind the stamps and mailing labels affixed to the exterior of the envelope, or elsewhere.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response F: Inmates that are housed in a restricted housing unit receive their mail after the postage affixed is removed, along with the flap and any other stickers that may appear on the envelope. Also, see Commenter #1, Response A.

Comment G: The list of allowable enclosures in incoming mail is too limited as it does not provide for newspaper/magazine clippings, photocopies, hardcopy materials from

the internet, postcards, or writing implements such as pencils or pens. Further, the language “including, but not limited to” invites different mailrooms to interpret the regulations differently.

Accommodation: The Department will alter language on this issue to state that newspaper/magazine clippings and internet downloads are allowable items as long as they do not violate any other regulatory section.

Response G: The Department issued a 15-Day Renote on January 31, 2008 that alters language on the issue of newspaper/magazine clippings and internet downloads. Postcards are not allowable property under current regulations, therefore, they will not be allowed in correspondence. Writing implements will not be included as allowable items through the mail. Inmates and their correspondents have other avenues that can be utilized to obtain these items. Additionally, indigent inmates are provided writing implements free of charge. Regardless of wording, the institutions will be required to allow those items listed to come in as long as the content does not violate any other regulatory section.

Comment H: Commenter states that there is no provision in the new regulations for incoming USPS 18 oz. Priority Mail or book orders, but only for 13 oz First Class mail or 16 oz Standard Mail. Priority Mail permits up to two pounds to be mailed in a USPS mailer. Also, most attorneys use these mailers regularly and send them to their clients. Letters heavier than 13 oz are a subclass of First Class mail and can be mailed as Priority Mail. There never has been a weight limit restriction before. In fact, there should be no reference to specific weights of correspondence in the regulations because the USPS could at any time change what constitutes a particular type of correspondence. There never has been a weight cap restricting mail delivery over 16 oz.

Accommodation: None.

Response H: A “personal correspondent” is not considered to be an attorney, a law firm, another state agency, bookstores that do mail order business, etc. It is “a personal correspondent” that is restricted from using Package Services (except Parole Clothing or Health Care Appliances) and limited to 13 ounces, the maximum size of a First Class letter. The Department mailrooms do not have the resources necessary to process beyond a First Class letter for “personal correspondents”. Current regulations allow each Warden to establish an operational procedure, and nearly all of those have limitations on the size of the letter and the number of pages that can be inserted. Using the USPS classifications of mail, and the limitations set for them, is a standardization of services throughout the Department. Additionally, mail coming in from confidential correspondents as defined in both the current and the proposed CCR section 3141 will not be limited in weight or postage classification.

Comment I: Commenter states that the existing regulations conform to existing court cases by permitting infringement on private correspondence only as necessary to ensure institutional security, whereas the proposed regulations would eliminate the privacy protection for correspondence between persons outside a prison and inmates, which invites abuse. The proposed regulations require staff to search every outgoing confidential envelope, which violates the rights of both inmates and their confidential correspondents.

Accommodation: None.

Response I: The Department contends that current regulatory language, as set forth in sections 3130, 3135, and 3138, is the same as the proposed regulatory language, and nonconfidential correspondence will be treated the same as it always has been.

The proposed policy for confidential correspondence standardizes the process and puts the ongoing inspection practice of outgoing confidential mail into the regulations. Outgoing confidential mail has always been searched in this manner. Steps are taken to ensure that the confidential mail is not inadvertently read. Currently, all of the institutions have the inmate present themselves to designated staff members who, without reading the correspondence, try to ensure that it does not contain contraband. This is the same process that is utilized for incoming confidential mail. The confidential mail is then sealed in the presence of a staff member who signs the letter along the sealed flap, annotating that the letter has been properly presented and sealed. The staff member then takes possession of the sealed mail and places it in the outgoing mail.

COMMENTER #2

Comment A: Commenter states that the proposed regulations would too narrowly define a “legitimate legal services organization” as one consisting of “an established group of attorneys”, and not include other legal organizations that provide litigation support services such as word processing, reproductions, filing of petitions and briefs, court and client correspondence, to reduce attorney fees by prohibiting their legitimate use of the confidential mail process. This would also include legal document assistants. Perhaps a registry of legal services organizations could be listed with the Department’s Office of Legal Affairs.

Accommodation: None.

Response A: The Department contends that the provisions for confidential correspondents are intended to maintain the attorney-client privilege between an inmate and an attorney who is on active status or is in good standing with a state bar association. However, the attorney-client privilege does not apply to non-attorney legal support services, such as word processors or legal document assistants. There is no obligation to add legal support services onto the list of persons and entities with whom an inmate can correspond confidentially.

COMMENTER #3:

Comment A: Commenter states that many families of incarcerated people come from low to very poor income families and have never operated a computer, much less owned one, with which to make any on-line purchases.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: This requirement has been removed. No correspondent will be required to purchase a computer. Also, see Commenter #1, Response A.

Comment B: Commenter states that many inmate families do not have a credit card to make on-line purchases.

Accommodation: See Accommodation to Commenter #1, Comment B.

Response B: The use of credit cards solely to purchase stamps will no longer be a requirement. Also, see Commenter #1, Response B.

Comment C: Commenter states that the new regulations discriminate against indigent inmates by limiting the amount of 1 oz letters they will be allowed to mail.

Accommodation: None.

Response C: The Department contends that in current regulations, CCR section 3134, indigent inmates are allowed to send out up to 5 one (1) ounce letters per week. The cost for a 1 ounce letter is \$.41 in 2008, which sets weekly postage at \$2.05 and monthly postage at approximately \$8.20. Most letters that are sent by inmates are 1

ounce or less, and cost \$.41. These are not new standards and are not discriminatory. Additionally, these letters do not include the mailing of legal documents to the Victims Compensation and Government Claims Board (formerly known as the "Board of Control") or the Courts.

Comment D: Commenter states that the proposed regulations will raise the operating costs of the Department, which will significantly increase the burden on California taxpayers.

Accommodation: None.

Response D: The Department disagrees. The Department anticipates that enactment of the proposed regulations will standardize and streamline operations statewide, and should in fact result in a reduction of operating costs and inmate appeals as a result.

Comment E: Commenter states that the proposed method of sending postage stamps to inmates will reduce the number of inmates receiving postage stamps, and therefore increase the number of indigent inmates.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response E: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment F: Commenter states that allowing inmates to receive funds only from family members is discriminatory against others that might be interested in helping an inmate by sending them a little money.

Accommodation: The Department will not restrict who may send an inmate funds provided they are not incarcerated. If incarcerated, then an inmate can only send an immediate family member, such as their mother or father, etc., funds.

Response F: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue to state that there will be no restriction on who may send an inmate funds, if they are not incarcerated.

COMMENTER #4:

Comment A: Commenter states that restricting inmates to only be able to send embossed envelopes is not practical as many people are not capable of accessing embossed envelopes to send to inmates. Also, my post office does not yet have embossed envelopes that reflect the new postage rates.

Accommodation: The Department will alter language on this issue to state that postage stamps can be sent in by correspondents as has been done in the past.

Response A: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue to state that postage stamps can be sent in by correspondents and regarding embossed envelopes.

Comment B: Commenter states that restricting correspondents of inmates to only be able to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response B: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

COMMENTS #5:

Comment A: Commenter objects to revisions proposed in CCR section 3142 regarding the searching of every outgoing confidential envelope, stating that it is a violation of the rights of both inmates and their confidential correspondents.

Accommodation: None.

Response A: The Department contends that all outgoing confidential mail must be inspected for contraband, without actually reading the confidential mail.

Comment B: Commenter states that the proposed regulations in CCR subsection 3142(d) requires staff to search every outgoing confidential envelope, which violates the rights of both inmates and their confidential correspondents. Commenter also states that this language is in conflict and is inconsistent with language contained in CCR section 3144, which states that outgoing confidential mail may be inspected with or without opening the mail for cause only.

Accommodation: The Department contends that while it is imperative to inspect outgoing confidential mail, conflicting language will be changed.

Response B: The Department issued a 15 Day Renote on January 31, 2008 that changes conflicting language.

Comment C: Commenter states that requiring staff members to physically search every outgoing letter will unduly delay outgoing and often urgent mail, which will create a huge backlog for custody and mailroom staff.

Accommodation: None.

Response C: The Department contends that this process is in current language and simply re-documents the practice. It does not delay the processing of outgoing mail.

Comment D: Commenter states that the proposed regulations impose severe sanctions on attorneys for "non-serious mail rule violations". There is no definition of that phrase, which leaves it open to interpretation, even for something as simple as failing to put the name of an attorney on the outside of an envelope. That is a simple infraction that would result in the suspension of confidential mail privileges for quite a period of time, a penalty which should be reserved for something criminal.

Accommodation: The commenter is correct and a definition of a non-serious violation has been added to the regulations in CCR section 3144(b).

Response D: The Department contends that a non-serious mail rule violation, for the purposes of confidential mail, means a violation of the inmate mail regulations that is not chargeable as a felony but that is nevertheless unlawful. Examples of a non-serious mail violation are an enclosure of physical contraband into the confidential mail, or a misrepresentation of the sender or addressee's identity. These violations tend to impede prison security and thus warrant administrative action. The Department will not suspend confidential mail privileges based solely on an inconsequential error or omission that does not compromise prison security and does not suggest intent to violate the law. A definition of a non-serious violation has been added as per the second 15 Day Renote.

Comment E: Commenter states that the proposed regulations are contradictory with respect to the inspection of incoming enclosed material included with confidential correspondence, in that one section directs staff to not read any incoming enclosures in confidential mail, while another section suggests that staff can use a different standard when dealing with enclosures in confidential mail.

Accommodation: None.

Response E: It is not clear where there is conflicting language in CCR section 3144 regarding the inspection of mail.

COMMENTER #6:

Comment A: Commenter states that the proposed regulations are a direct violation of an inmate's constitutional rights with respect to what constitutes obscenity. For example, under the proposed regulations, an entire literary work could be banned from being sent to an inmate if just a few sentences in the literary work were deemed to be obscene. Also, even if a publication were ordinarily allowed to come into an institution, it could be banned just because it contained material about obscene material. While the new regulations make a gallant effort to define obscenity, it is fruitless because that is a subject matter that is so subjective that it can only be open to interpretation that will vary from one person to the next. Finally, this language can be interpreted such that even if a publication is allowed to come into the prison, it could be banned just on the basis that it contains an advertisement on how obscene material can be obtained.

Accommodation: None.

Response A: The Department agrees that it is difficult to define what is obscene. However, the Department has been striving to reduce inmate access to obscene material over the past several decades, both to provide more of a rehabilitative environment for an inmate serving a sentence, and in response to litigation mandating that the Department not expose staff or other inmates to obscene material or acts in the workplace. In fact, the Department has already introduced very similar language several years ago into its regulations in CCR section 3006 entitled "Contraband". As the subject of "Inmate Mail" is so important, the Department determined that it was important to reiterate what obscene material will not be allowed into an institutional setting. The Department will make every effort to strive towards consistency when determining what materials may be allowed through the mailroom, and what materials may not be allowed.

Comment B: Commenter states that the proposed regulations imply that Wardens may limit the number of persons any inmate may correspond with, not just those inmates located in restrictive housing. The only requirement is that Wardens outline in their local procedure any further restrictions on correspondence due to safety and security concerns.

Accommodation: The commenter is correct and the conflicting language in proposed section 3139 will be changed. The Warden's ability to make additional restrictions only applies to inmates housed in a Security Housing Units (SHU), Administrative Segregation Units (ASU), or Psychiatric Services Units (PSU). The formatting of the proposed language will be changed to clearly identify the appropriate subgroups.

Response B: The Department issued a 15 Day Renotice on January 31, 2008 that changes conflicting language.

Comment C: Commenter states that it has long been established that a minimal amount of due process must accompany a decision to censor or withhold inmate mail. Yet the new regulations permit Wardens to bypass this constitutional requirement by providing that Wardens need only to outline in their local procedure any further restrictions on correspondence due to safety and security concerns, and thus can censor or withhold any mail.

Accommodation: The proposed language will have a correction made to its formatting to clearly indicate that the limitations are only applicable to inmates housed in a restricted housing area.

Response C: The Department contends that current regulations allow each Warden to decide by local policy the restrictions placed on correspondence between inmates. The proposed regulations limits the Wardens, allowing them only the ability to restrict correspondence between inmates if they are housed in a SHU, ASU, or PSU. The Department issued a 15 Day Renotice on January 31, 2008 that changes conflicting language

As to restrictions based on abuse or safety and security concerns; these can only be implemented after the inmate is seen by a committee and their due process rights have been considered.

Wardens are not allowed to create a policy that allows them to censor or withhold mail for inmates. They are only allowed to restrict, under specific circumstances, correspondence between inmates. Mail from personnel correspondents (other than that from other inmates) will only be withheld if it violates these regulations.

COMMENTER #7:

Comment A: Commenter states that restricting correspondents to inmates to only send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or have access to a computer. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

COMMENTER #8:

Comment A: Commenter states that restricting correspondents of inmates to only be able to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a phone, much less have access to a computer or the internet, or they lack the skills necessary to make on-line purchases. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A

Comment B: Commenter states that there is no provision in the new regulations for incoming USPS 18 oz. Priority Mail or book orders, but only for 13 oz First Class mail or 16 oz Standard Mail. Priority Mail permits up to two pounds to be mailed in a USPS mailer. Also, most attorneys use these mailers regularly and send them to their clients. Letters heavier than 13 oz are a subclass of First Class mail and can be mailed as Priority Mail.

Accommodation: None.

Response B: See Commenter #1, Response H.

COMMENTER #9:

Comment A: Commenter states that the former regulations stipulated that each Warden shall prepare and maintain a plan of operation regarding the sending and receiving of inmate mail, which then must be approved by the Director. The proposed regulations eliminate this requirement. Requiring the Secretary to review operational procedures regarding mail helps ensure that the institutions properly implement the

regulations in their plans of operation. Without this oversight, institutions very likely will adopt operational procedures that improperly implement the regulations, thereby increasing the chance that inmate rights to correspond with the outside world will be impinged upon, and expose the Department to increased liability. In fact, operational procedures should just be eliminated altogether.

Accommodation: None.

Response A: Once the regulations have been codified, the Wardens will not have the ability to create an “Operational Procedure” that differs from the policy in the regulations. However, due to the difference in the physical plant of each institution, a Department Operations Manual (DOM) supplement can and should be created in order to answer local issues like the days and hours of mailroom operation; where mailbags are picked up by custody staff and returned; location of mailrooms; how inmates are informed of local mail practices; etc.

It is the Department’s intent that all of the DOM supplements be reviewed and approved by each Warden within 180 days of the regulations being codified and implemented. Audits of the mailrooms and the DOM supplements are part of the annual audits conducted by the Secretary’s auditors.

Comment B: Commenter states that the proposed regulations provide that staff must notify an inmate whose first class mail is not accepted for mailing, but does not require staff to notify an inmate whose periodicals is not accepted for mailing, whereas existing regulations require staff to notify inmates if second class mail is not accepted for mailing. Review of denial to send periodical mail should be provided for as well. Also, proposed CCR subsection 3133(e) states “If any First Class Mail is not accepted for mailing, or is accepted for mailing but is not properly mailed, the inmate shall be notified in writing of the reason for refusal to accept or to promptly mail the item(s).” The word “properly” should be changed to “promptly” based on the last phrase in the sentence.

Accommodation: None.

Response B: The Department contends that inmates only have the ability to mail out items through First Class mail and, if necessary (as in sending items home), under Priority Class (part of First Class) or Package Services. Inmates are not able to mail items under the Periodical classification, or under the Standard Mail classification, which were both previously under Second Class Mail. Therefore, it is not necessary to speak to an inmate about these classifications of mail since they will not be utilized.

As to the commenter suggestion that the word “properly” be changed to “promptly”, the Department will leave the word “properly” in the regulations. “Properly” means that staff who collect the mail will send it to the mailroom. It also means that if so designated, the mailroom will obtain a translation if needed, or notify the Security and Investigative Services Unit before sending the mail piece to the USPS. The regulations now clearly indicate to staff that inmates must be notified of any piece of mail that is delayed being sent to the USPS beyond 5 business days, regardless of the reason.

Comment C: Commenter states that an inmate’s right to communicate confidentially with their attorneys requires that staff open inmates’ legal mail in the presence of the inmate. The proposed regulations provide contradictory information regarding the opening of legal mail, as one section states that all incoming packages and mail addressed to an inmate will be opened and inspected before delivery to the inmate, and another section states that staff shall open the letter in the presence of the addressed inmate at a designated place and time.

Accommodation: None.

Response C: The Department contends that the regulatory provisions are not contradictory. CCR section 3133(b)(3) provides that all mail to inmates will be opened and inspected prior to delivery to the inmate. CCR section 3144 then creates some added privacy rules in the context of confidential mail, that the confidential mail will be opened only in the presence of the inmate and that correctional staff shall not read the contents of the confidential mail. These added privacy rules in CCR section 3144 do not conflict with CCR subsection 3133(b)(3).

Comment D: Commenter states that the proposed regulations restrict an inmate from receiving cotton paper or writing paper other than paper that is white or yellow lined. However, certain court filings require an inmate to submit colored paper with the filing. Also, CCR subsection 3134(a) lists certain items that are acceptable in first class mail, which may give the impression that items not on the list are not acceptable, such as artwork, newspaper clippings, or email copies. As such the list should be removed. Finally, the limit on how much writing paper an inmate can have should be increased to at least 500 pages.

Accommodation: The Department will add language to clarify what kind of colored paper is allowable, and to ensure that internet items and newspaper clippings are allowable in First Class mail.

Response D: The Department reaffirms that writing paper will be limited to white or yellow lined paper. Additionally, a correspondent can not send in more writing paper than the allowable weight for a First-Class letter (13 ounces). As such, the accumulation of a large amount of writing paper would be difficult and expensive, and would be viewed as not serving any significant penological interest.

Legal paper is only limited to “no cotton”. However, just to be clear the Department will insert clarifying language stipulating that legal paper will include colored paper required by court rules, but no cotton paper. The Department will also add language that will ensure that newspaper clippings and internet download items are allowable in First Class mail, subject to any weight limitations and other existing restrictions on content (such as obscene material). The changes have been included in the 15-Day Renote dated January 31, 2008.

Comment E: Commenter states that there is no penological reason to mandate that metered reply envelopes that outsiders send to prisoners must be marked with postage enough to prepay the postage in full, and it is burdensome for inmates who seek to add stamps to metered envelopes so they have sufficient postage. Also, the requirement to add the language “NO POSTAGE STAMP NECESSARY POSTAGE HAS BEEN PREPAID BY” is unnecessary and should not have to be added. And if metered envelopes are to be limited in size, then that size should be mentioned in this subsection.

Accommodation: None.

Response E: The Department contends that metered envelopes will not be limited in size. However, the language that was inserted relative to metered envelopes was taken directly from the USPS Domestic Mail Manual. These are the only types of metered envelopes that can be legally sent into inmates since an envelope sent through a postage meter (or a label from a postage metered affixed to an envelope) is legally only valid the date it was metered.

Comment F: Commenter states that proposed CCR subsection 3138(g) allows indigent inmates to have free and unlimited postage to mail documents to any court or the Attorney General’s (AG) Office. However, it does not stipulate that indigent inmates must have free and unlimited postage to mail documents to serve other parties such as the Board of Control to initiate torts or to file documents with entities other than the

courts to pursue lawsuits as in medical malpractice cases against health care providers. It is not fair that an indigent inmate can send unlimited free mail to the Department's attorney (the AG), but not his own attorney.

Accommodation: None.

Response F: The Department contends that CCR section 3138(g) implements the law that prisons must allow indigent inmates to send free legal mail consisting of the number of copies of legal documents required by the court, plus one copy for an opposing party, and one copy for the inmate's records. The AG usually represents the opposing party when an inmate takes action against the state, but private counsel may at times provide this representation in lieu of the AG. Unless required by a court order, an indigent inmate is not entitled to also send free and unlimited copies of legal mail to their own attorney.

Comment G: Commenter states that CCR subsection 3139(a) should state that prisoner's seeking to communicate with incarcerated immediate family members are not required to obtain approval beforehand, which would then comport with CCR subsection 3139(f), which states that Wardens cannot prohibit inmates from communicating with immediate family members who are incarcerated. For clarification that the restrictions relate to correspondence between inmates, the words "inmate-inmate" should be added before "correspondence" in CCR subsection 3139(e), "incarcerated" should be added before "immediate family members", and "incarcerated" should be placed in front of "co-litigants". Also, CCR subsection 3139(a) should not require inmates to obtain permission before corresponding with parolees and probationers.

Accommodation: None.

Response G: The Department contends that the title of this section specifies that the entire section speaks to "Correspondence Between Inmates/Parolees/Probationers", and that further clarification is not necessary. CCR subsection 3139(a) states inmates must obtain permission to correspond with any other inmate, even those to which they are related. CCR subsection 3139(e) gives Wardens with specific types of restricted housing units the ability to restrict inmate to inmate correspondence; but only for those inmates in those restricted housing units. CCR subsection 3139(f) limits the Warden's ability to restrict the correspondence for inmates living in specified types of restricted housing.

COMMENTER #10:

Comment A: Commenter states that the former regulations stipulated that each Warden shall prepare and maintain a plan of operation regarding the sending and receiving of inmate mail, which then must be approved by the Secretary. The proposed regulations eliminate this requirement. Requiring the Secretary to review operational procedures regarding mail helps ensure that the institutions properly implement the regulations in their plans of operation. Without this oversight, institutions very likely will adopt operational procedures that improperly implement the regulations, thereby increasing the chance that inmate rights to correspond with the outside world will be impinged upon, and expose the Department to increased liability.

Accommodation: None.

Response A: See Commenter #9, Response A.

Comment B: Commenter states that there is only provision in the new regulations for 13 oz First Class mail or 16 oz Standard Mail, and not Priority Mail. Failing to include this information may lead some correspondents to believe that they are limited to only sending letters that weigh 13 ounces or less.

Accommodation: None.

Response B: See Commenter #1, Response H.

Comment C: Commenter states that striving to deliver First Class mail to inmates within seven (7) calendar days is a welcome policy change that will benefit inmates and their families.

Accommodation: None.

Response C: The Department appreciates the commenter's support. It is Departmental practice to date the bins of mail that are received daily, with the date received. These are the dates that are utilized to process the oldest first and to ensure that the time frames are met. Institutions currently try to deliver all First Class mail within the 7 day time frame.

As to time frames for Periodicals (magazines and newspapers sent in via the USPS), the institution mailrooms try to deliver those within the 7 day time frame. However, the commenter needs to know that these types of mail are not a priority with the USPS. First Class mail is the priority for delivery, then Periodicals, Packages and Standard Mail.

Daily newspapers received at the institution from contract couriers are delivered the day they are received. Audits of each institution mailroom occur on an annual basis. Part of that audit is to ensure that time limits imposed for delivery are being met. If the audit shows that time limits have not been met, the Warden is responsible for developing, implementing and completing a correction action plan to resolve the issue.

Comment D: Commenter states that recently the mailroom at Pelican Bay State Prison (PBSP) has begun using a large red-colored stamp reading "PELICAN BAY STATE PRISON SHU" on the outside of the envelope as well as on each page of the correspondence, and sometimes stamping over words, making them difficult to read. Why isn't such a stamp only on the envelope sufficient to identify the origin of the correspondence?

Accommodation: None.

Response D: The Department acknowledges that PBSP has started to stamp all pages of correspondence coming out of the Security Housing Units. Although the red ink that was previously used allowed for the reader to read the contents of the letter, the color of the ink has been changed to yellow in order to make it easier to read. The reason for this coding is to ensure that the documents are not being mailed back into other inmates by parties outside of the institution. Since PBSP started this procedure, stamped pages have been sent to inmates in prisons in at least two other states, and a number of institutions within California. These documents are being sent in by a third party, personal correspondent. All inmates must have pre-approved permission to write to each other. Therefore, sending this correspondence to another inmate via a third party is a violation of these regulations.

Comment E: Commenter states that restricting correspondents to only be able to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response E: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment F: Commenter states that there is no penological reason to mandate that metered reply envelopes that outsiders send to prisoners must be marked with postage enough to prepay the postage in full, and it is burdensome for inmates who seek to add stamps to metered envelopes so they have sufficient postage. Also, the requirement to add the language “NO POSTAGE STAMP NECESSARY POSTAGE HAS BEEN PREPAID BY” is unnecessary and should not have to be added. And if metered envelopes are to be limited in size, then that size should be mentioned in this subsection.

Accommodation: None.

Response F: See Commenter #9, Response E.

Comment G: Commenter states that restricting what class of inmates an inmate may correspond with to immediate family members, co-litigants on active cases, and incarcerated parents, is a welcome change because it clearly identifies persons with whom an inmate may correspond with under all circumstances.

Accommodation: None.

Response G: The Department appreciates the comment that it is creating a welcome change and clearly identifies who an inmate may correspond with. However it is noted that these restrictions can apply only to inmates housed in restricted housing as outlined in CCR section 3139.

Comment H: Commenter states that CCR subsection 3141(b) would delete the words “staff members” and replace them with “employees” in describing those who may send and receive confidential correspondence. This may cause problems for legal services agencies that use volunteers and unpaid interns to assist them with confidential correspondents to and from inmates. Perhaps the words “attorney representative” would be more appropriate.

Accommodation: None.

Response H: Department responds that it is lawful to limit confidential correspondences with inmates to the persons and entities listed in CCR subsection 3141(b), and their employees. The right of inmates to correspond confidentially does not extend to volunteers or to non-employees of the listed persons and entities.

Comment I: Commenter states that the new requirement that an attorney’s return address must match the address listed with the State Bar should be removed. It would seem that there would be an unreasonable amount of staff time involved in checking addresses. Many attorneys move their offices, and the State doesn’t always update the list immediately. Further, this will be an additional burden to legal services agencies that use volunteer attorneys because the volunteer agency’s address will not necessarily be the same as the address that the state bar has listed for that specific attorney. Not all attorneys are members of the Bar. And just what is an attorney in “good standing”? What is the concern whether an attorney is in good standing with the bar? Also, some inmates have out-of-state attorneys that are not registered with the California state bar.

Accommodation: None.

Response I: The Department responds that to qualify for a confidential communication with an inmate, an attorney must be on active status or in good standing as listed with a state bar association. This means that the attorney must be listed with the bar association as being eligible to practice law. The California State Bar Association uses the term, “active” to denote an attorney who is eligible in California to practice law.

State bar associations outside of California may use other terms to denote good standing in their jurisdictions to practice law.

It is necessary for an attorney's return address to match the address that is listed with the state bar association, as provided in CCR section 3143. Such a measure helps to reduce the possibility that an outside person can commit fraud or an offense by misrepresenting him or herself as an attorney.

COMMENTER #11:

Comment A: Commenter states that there is no clarification as to how long a holiday season extends, and that the term "season" is ambiguous and could cover holidays for all major religions. Also, how can a lockdown affect the receiving of a package, other than as punishment for the group of people that are under lockdown. Sometimes packages are delayed for months, thereby making some contents outdated, and making it impossible to get refunds for items not wanted.

Accommodation: None.

Response A: The Department contends that mailroom supervisors are very experienced in assessing which of all the holidays result in the highest volume of increased mail. Typically these holidays have been what are commonly referred to as Thanksgiving, Christmas, and Easter, with Christmas being the season where the highest volume of mail is received. Extra staff are added to the mailroom during these seasons as resources are available. The length of a season can only be determined by how quickly a mailroom can return to processing a normal volume of mail.

Commenter is correct in noting that the lockdown of a prison facility can result in the delay of what are ordinary operations in that facility. All facilities have a set number of custody staff assigned to them to perform day to day operations, including but not limited to cell moves, processing property or packages, performing cell inspections, and interviewing inmates. If an incident occurs that is serious enough for prison management to determine a lockdown must be affected, the assignments of those staff must be diverted to more specialized operations. Prison management can only release a facility from lockdown status when it is determined that it is safe to do so for both inmates and staff.

Comment B: Commenter states that many stakeholders in prison reform have, out of empathetic humanity, sent small amounts of money to the accounts of inmates not related to them. These modest sums allow otherwise indigent inmates to afford personal items and toiletries via the canteen system. To prohibit monetary contributions to those accounts from anyone other than immediate family is an untenable prospect. The monies involved in inmate accounts are, by law, restricted in amount and usage. No inmate has access to significant sums and the ways those funds are used are closely monitored by CDCR staff. To deny any inmate canteen access or access to educational products because they don't have an immediate relative is senseless and only foments frustration among inmates and stakeholders.

Accommodation: The Department has made the decision to remove this stipulation. The belief is that there are sufficient procedures in place to monitor and impede the payment of drug debts from an inmate's fund.

Response B: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue that allows monies to be sent in by non-family members.

COMMENTER # 12:

Comment A: Commenter states that restricting correspondents to sending postage stamps to inmates that have been ordered from a USPS internet site and sent directly

from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

COMMENTER #13:

Comment A: Commenter states that CCR section 3133 now has language that reads "All nonconfidential mail shall be inspected and read by staff". Currently staff reviews mail for obvious violations or contraband, but does not read each piece of mail. This regulation shift could result in increased workload.

Accommodation: Subsection 3133(b)(5) is incorrect as no confidential mail shall automatically be read. Also, this is duplicative to subsection 3133(b)(3) which correctly states that confidential mail is subject to being read.

Response A: Subsection 3133(b)(5) has been removed from the regulations in the 15 Day Renote.

Comment B: Commenter states that it is impossible to ascertain the specific effects of the proposed regulation changes as the regulations leave it to the Department to draft new policy to implement the new requirements. This policy review is without public review. At a minimum, the proposed regulations require some public review as they may potentially increase workload and staffing.

Accommodation: None.

Response B: The Department contends that this amendment follows the Administrative Procedure Act and the requirement for public review. The Department filed the Notice of Change to Regulations pertaining to inmate mail regulations with the Office of Administrative Law which was published in the California Regulatory Notice Register effective March 23, 2007, and which began the 45 day public comment period. Numerous written comments were received during that period, which concluded with the public hearing on May 11, 2007. The amendment represents current mailroom procedures that have changed over the years from the last published mail regulations, as well as some changes that will ensure that mail regulations are in conformity with federal and state law. There will be no increase in workload or in staffing.

COMMENTER #14 and #15:

Comment A: Commenter states that restricting correspondents to sending postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

COMMENTER #16:

Comment A: Commenter states that the requirement that all nonconfidential mail be read by staff in its entirety is not fair because staff already read much of the mail which can slow its delivery up to a week. Now it would be held up even longer. An alternative would be to assign mailroom staff to read the mail.

Accommodation: None.

Response A: The Department responds that the requirement for nonconfidential mail to be read by staff applies to incoming mail and outgoing mail. Incoming mail is opened, inspected, and scanned by staff assigned to the mailroom. Mailroom staff are experienced in assessing very quickly whether a particular correspondence is presenting a security concern that would warrant closer scrutiny by either custody or investigative staff, which could result in a short delay in the delivery of that correspondence. Outgoing mail is read by custody staff in the housing unit as part of their assignment on first watch, and then forwarded to the mailroom early the next morning for processing. The requirement is designed to ensure that nonconfidential mail is processed as efficiently as possible in view of the many security considerations within the prisons.

Comment B: Commenter states that restricting correspondents of inmates to only be able to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or have access to a computer. As such, many inmates who receive stamps now will not get them again.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any venue that they choose. Also, see Commenter #1, Response A.

COMMENTER #17:

Comment A: Commenter states that in CCR section 3134 that grammatically capitalizing “Postage Stamps” and “Internet” is incorrect. They are not proper names and should not be capitalized.

Accommodation: Amend the words “Postage Stamps” to lower case.

Response A: The Department agrees that the words “Postage Stamps” should not be in uppercase, but the word “Internet” usually is in uppercase.

Comment B: Commenter states that restricting correspondents to sending postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response B: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment C: Commenter states that this regulation change has neglected to properly justify the “necessity” and “consistency” standards of Government Code 11349.1. This restrictive proposed regulation change is a technique to abridge an inmate’s freedom of speech to correspond with one another. Inmates are entitled to more favorable “necessary and essential” standards for out going mail.

Accommodation: None.

Response C: The Department responds that this regulatory change does meet the “necessary” and “consistency” standards as set forth in Government Code 11349. As explained in the Initial Statement of Reasons, this regulatory change is necessary to align the Department’s mail policy with current United States Postal Service regulations, to avoid litigation regarding treatment of certain bulk rate items, and to incorporate older Department instructions regarding various changes to mail procedures. Also, this

regulatory change is consistent with all applicable federal and state law. The Department contends that the encouragement of ongoing written communication between an inmate and their family and friends is well recognized as a contributing factor in maintaining a healthy prison environment. The regulatory change does not unlawfully abridge an inmate's freedom to speak or to correspond.

Comment D: Commenter states that CCR section 3134 stipulates that inmates may not possess or have under their control mail containing information concerning where, how, or from whom, obscene material may be obtained. What about publications or magazines that are perfectly legitimate, but contain an advertisement on how to obtain obscene material? Also the terminology of "deviant sexual" is not defined nor is there any legal standard for defining it that the Regulation changes rely on.

Accommodation: None.

Response D: Publications that contain information or advertisements on how to obtain/order obscene material will not be allowed under these regulations.

The words "deviant" and "sexual" do not need to be defined in CCR. These are words used by the general public and the definition for them can be found in any dictionary.

Comment E: Commenter states that in CCR subsection 3138(b), the word "Subsection" should not be capitalized. Also, this word is used in conjunction with a DOM reference, which appears to be a backdoor way to get it into the CCR without the benefit of having it properly promulgated within the scope of the Administrative Procedures Act.

Accommodation: Amend the word "Subsection" to lower case, and remove the DOM reference.

Response E: The Department responds that a 15 Day Renotice was filed on January 31, 2008. The word "Subsection" is in the lower case. Additionally, the DOM reference has been removed and a brief explanation of the appropriate metered envelope provided instead.

Comment F: Commenter states that the new requirement that an attorney's return address must match the address listed with the State Bar should be removed. It would seem that there would be an unreasonable amount of staff time involved in checking addresses. Many attorneys move their offices, and the State Bar doesn't always update the list immediately. Further, this will be an additional burden to legal services agencies that use volunteer attorneys because the volunteer agency's address will not necessarily be the same as the address that the state bar has listed for that specific attorney. Not all attorneys are members of the Bar. And just what is an attorney in "good standing"? What is the concern whether an attorney is in good standing with the bar? Also, some inmates have out-of-state attorneys that are not registered with this state's Bar.

Accommodation: None.

Response F: See Commenter #11, Response A.

COMMENTS #18:

Comment A: Commenter states that restricting correspondents to sending postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response B: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment B: Commenter states that banning metered envelopes puts an undue burden on inmates, because sometimes metered envelopes are all that inmates can get their hands on.

Accommodation: None.

Response B: The Department contends that the language pertaining to metered envelopes comes directly from the United States Postal Service's Domestic Mail Manual. These are federal regulations that we must abide by.

COMMENTER #19:

Comment A: Commenter states that before making some of these changes that will most likely slow the mail procedures down, the Department should check with all prisons to see which ones are delivering the mail the fastest, such as Donovan.

Accommodation: None.

Response A: The Department responds that a great deal of time was expended comparing and evaluating each prison mailroom prior to the development of these regulations changes, with the intent to standardize the mailroom operation as much as possible. Additionally, the Department tailored the regulatory changes to model the Federal mail regulations, and to incorporate recent agreements in court litigation on the subject of inmate mail.

Comment B: Commenter states that restricting correspondents to sending postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response B: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A

Comment C: Commenter states that many inmate families do not have a credit card to make on-line purchases, or would not want to use a credit card to make on-line purchases for fear of credit card fraud.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response C: The use of credit cards solely to purchase stamps will no longer be a requirement. Also, see Commenter #1, Response A

Comment D: Commenter states that requiring an inmate to not be able to have funds for one single First Class stamp for a period of 30 days prior to the request for indigent envelopes is not practical. Say an inmate is working on a response to the court on his writ, and yet has only been without funds for 10 days. Yet he must complete and mail back his response within 5 days. This would not work. Also, the language is vague in that staff could interpret the language to mean more than 30 days.

Accommodation: None.

Response D: The Department contends that the actual definition for an indigent inmate has been expanded to include the language that an "Indigent inmate means an inmate who has \$1.00 or less in their Inmate Trust Account for 30 consecutive days".

The Department has always paid for postage for documents to the courts for inmate's that are indigent.

Per CCR Section 3165, "The cost of postage for mailing documents to the courts will be charged against an inmate's trust account unless the inmate is without funds at the time the material is submitted for mailing and remains without funds for 30 days after the documents are mailed."

Comment E: Commenter states that the new requirement that an attorney's return address must match the address listed with the State Bar should be removed. It would seem that there would be an unreasonable amount of staff time involved in checking addresses. Many attorneys move their offices, and the State Bar doesn't always update the list immediately.

Accommodation: None.

Response E: See Commenter #11, Response A

Comment F: Commenter states that small non-profit publishers of periodicals may print them up at irregular intervals, even though that may be once a quarter, or perhaps even less. If that publisher is not on the Department's known list of publishers, and they don't mail their publications out at the specified times, staff could possibly trash them and give no notice as to why. This change would have a strong adverse impact on the ability of inmates to receive some publications which is clearly a violation of first amendment rights.

Accommodation: None.

Response F: The Department contends that, subject to CCR subsection 3134(f), there are no approved vendor lists for any publications. The only publication lists that the Department maintains are for disapproved publications. The fact that a publication does not appear on the Departmental list of publishers therefore would not cause that publication to be rejected. CCR subsection 3134(f) has no adverse impact on the ability of inmates to communicate with each other, or to receive publications. The Department has however, in response to other commenter's on this subject, elected to separate that portion of CCR section 3134 dealing with publications and placed that information in its own section. Additionally, the information dealing with disapproved publications has been expanded on, particularly that information dealing with publishers appeal rights. This change is noted in the 2nd 15 Day Renote.

Comment G: Commenter states that with respect to packages, there is no clarification as to how long a holiday season extends, and that the term "season" is ambiguous and could cover holidays for all major religions. Also, how can a lockdown affect the receiving of a package, other than as punishment for the group of people that are under lockdown. Sometimes packages are delayed for months, thereby making some contents outdated, and making it impossible to get refunds for items not wanted.

Accommodation: None.

Response G: See Commenter #11, Response A.

Comment H: Commenter states that many stakeholders in prison reform have, out of empathetic humanity, sent small amounts of money to the accounts of inmates not related to them. These modest sums allow otherwise indigent inmates to afford personal items and toiletries via the canteen system. To prohibit monetary contributions to those accounts from anyone other than immediate family is an untenable prospect.

Accommodation: The Department has made the decision to remove this stipulation. The belief is that there are sufficient procedures in place to monitor and impede the payment of drug debts from an inmates' fund.

Response H: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue that allows monies to be sent to non-family members.

COMMENTER #20:

Comment A: Commenter states that the requirement that all nonconfidential mail be read by staff in its entirety is not fair because staff already read much of the mail which can slow its delivery up to a week. Now it would be held up even longer. An alternative would be to assign mailroom staff to read the mail.

Accommodation: None.

Response A: The Department responds that incoming and outgoing mail will continue to be processed as it always has been processed. Also, see Commenter # 16, Response A.

Comment B: Commenter states that it is impossible to ascertain the specific effects of the proposed regulation changes as the regulations leave it to the Department to draft new policy to implement the new requirements. This policy review is without public review. At a minimum, the proposed regulations require some public review as they may potentially increase workload and staffing.

Accommodation: None.

Response B: See Commenter #13, Response B.

COMMENTER #21:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response B: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A

Comment B: Commenter states that San Quentin Prison is a filthy prison, mail delivery is erratic, the food is bad, medical care is very poor, and the recidivism rate is very high.

Accommodation: None.

Response B: The Department contends that although the above comment does address an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to GC Section 113435.9, it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

COMMENTER #22:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site, with a credit card, and sent directly from the USPS to the inmate is unrealistic.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A

Comment B: Commenter states that many stakeholders in prison reform have, out of empathetic humanity, sent small amounts of money to the accounts of inmates not related to them. These modest sums allow otherwise indigent inmates to afford personal items and toiletries via the canteen system. To prohibit monetary contributions to those accounts from anyone other than immediate family is an untenable prospect.

Accommodation: The Department has made the decision to remove this stipulation. The belief is that there are sufficient procedures in place to monitor and impede the payment of drug debts from an inmates' fund.

Response B: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue that allows monies to be sent to non-family members.

COMMENTER's #23 through #25:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them again.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A

COMMENTER #26:

Comment A: Commenter states that the former regulations stipulated that each warden shall prepare and maintain a plan of operation regarding the sending and receiving of inmate mail, which then must be approved by the Director. The proposed regulations eliminate this requirement. Requiring the Secretary to review operational procedures regarding mail helps ensure that the institutions properly implement the regulations in their plans of operation.

Accommodation: None.

Response A: See Commenter #9, Response A.

Comment B: Commenter states that section 3136 should be changed to read that only the Warden or the Chief Deputy Warden should be allowed to make substantive decisions regarding discretionary censorship decisions of inmate mail. This would more closely follow Federal Bureau of Prison policy.

Accommodation: None.

Response B: The Department will not at this time entertain the proposal to change this section. The Federal Bureau of Prison houses approximately 161,804 inmates in 174 facilities (for an average of 958 inmates per facility; the highest count is 2,517, and the lowest is 113). CDCR houses approximately 161,170 inmates in 33 institutions (for an average of 4,883 inmates per facility). The rest are located in camps and community correctional centers. This means that on an average the Department houses at least three times more inmates in each of its facilities. While a Warden and/or Chief Deputy Warden at a Federal Prison may have the time and resources to personally sign for as many as 1000 inmates, the Warden and/or Chief Deputy Warden at a California prison does not have the time or resources to sign for all disallowed mail that is a clear violation of Title 15. The Department did add language that states "Disapproval of material that is not in clear violation of CCR sections 3006, 3135, and 3139 shall be referred to the warden, but not lower than the chief deputy warden, for determination

and appropriate action". As such, any discretionary decision making with regards to the disallowance of an inmates mail will be made by high ranking officials in the institution.

Comment C: Commenter states that in order to conform to recent litigation, the proposed regulations must direct staff to include specific information about the inmate and the publication and to complete the notice of mail/publication disapproval within a specified time period. Fourteen days is too long to ensure timely notice to a publisher. The regulations must also inform staff that publishers have a right to appeal any censorship decision regarding their publication.

Accommodation: The Department will amend the fourth sentence of CCR subsection 3134(i) as follows: "The letter must be sent within 15 calendar days of the determination to censor the book, magazine, or publication."

Response C: The Department responds that there is no time limit under the law for when a prison must send a notification to a publisher that its publications have been rejected from entering into the prison. Fifteen days is not too long to provide this notice to the publisher because the prisons often need this full period to record all publications that are rejected and to prepare an adequate notification. The Department nevertheless agrees to change its response time for a notification from 14 business days to 15 calendar days for consistency with others sections of the Mail regulations, as noted in the 15 Day Renotice filed January 31, 2008.

Comment D: Commenter states that the proposed regulations should be reorganized, and that section 3130 should be renamed. This will provide for a better flow of information to staff members who will be tasked with enforcing the regulations.

Accommodation: None.

Response D: The Department responds that a task force of subject matter experts developed the organization of the regulations, which were approved by the Secretary of the Department. Nonetheless, the Department thanks the Commenter for their editorial suggestion.

Comment E: Commenter states that the proposed regulations confuse regular mail with the quarterly package system. The regulations should clarify that inmates can receive publications such as books, magazines, and periodicals, at any time, and not just with quarterly packages.

Accommodation: None.

Response E: The Department asserts that all references to "quarterly packages" in this section have been deleted since it is now a "Vendor Package" program. Additionally, this section does not reference anything about the Vendor Package Program. The reference to packages is defined in CCR section 3133 as "Package Services are Parcel Post, bound Printed Matter, Media Mail, and Library Mail". With the exception of Parole Clothes and medical/assistive devices, inmates shall not be allowed to receive Package Services directly from personal correspondents. Personal correspondents do not include the courts, law firms, county, state and federal agencies, publishers, bookstores, book distributors, etc. Personal correspondents sending in medical/assistive devices for inmates shall address them to the CDCR doctor who initiated the prescription. The inmates name and number must be inside the package with a copy of the original prescription.

Comment F: Commenter states that they do not object to the additional definition of "indigent inmate", but that full definition should be restated in CCR subsection 3133(a)(5).

Accommodation: None.

Response F: The Department responds that the full definition is sufficient in the definition section only, as the phrase "indigent inmate" may be utilized in another regulation. The purpose of having a partial definition in CCR subsection 3133(a)(5) is to provide greater detail as to the requirement for an inmate to receive indigent envelopes.

Comment G: Commenter notes that the following language has been removed from existing text in the proposed regulations: "The privacy of correspondents between inmates and persons outside correctional facilities shall not be invaded except as may be necessary to prevent physical injury to persons and to maintain the security of correctional facilities and the community". Commenter contends this language captures an essential policy of the Department that serves to protect correspondents such as Prison Legal News, and should not be removed.

Accommodation: None.

Response G: The Department responds that confidential communications are the only types of communications that are private between inmates and persons outside of prison. Non-confidential communications are not subject to privacy. It therefore is lawful for the Department to delete the text from its General Policy regulation for inmate mail, at CCR section 3130, which addresses the privacy of all types of inmate correspondences. The CCR regulations continue to offer special privacy protection for correspondences that qualifies as confidential.

Comment H: Commenter states that under definitions there should be a definition for what constitutes legal mail or legal correspondence.

Accommodation: The Department will amend the first sentence of Title 15 section 3133(c) as follows: "Mail that is designated by the inmate as legal mail, and that is submitted with a CDCR Form 193, Inmate Trust Withdrawal, to pay for filing fees or other costs, may be left unsealed so that the voucher (check) can be enclosed after the trust account withdrawal has been processed."

Response H: The Department agrees to amend CCR subsection 3133(c) to define legal mail, in the context of fees or other costs for an action, as mail that is designated by the inmate as legal mail. This change is noted in the 15 Day Renotice filed January 31, 2008. This approach is similar to CCR subsection 3165(a).

Comment I: Commenter states that in CCR subsection 3133(b)(1) the last subpart about Standard Mail is confusing, and would be clearer if changed to read: "All incoming mail shall be properly addressed. Appropriately addressed mail shall include the inmate's name and department identification number. The mail should also include the address designated by the institution for inmate mail. The receiving institution is required to update any mail piece that does not reflect accurate housing or institutional location. Standard mail must also be addressed to an individual inmate, showing the inmate's name, CDCR number, and the address for the applicable institution".

Accommodation: The commenter suggestion was taken under advisement and partially implemented. For clarity, the proposed regulations will delete the initial reference to Standard Mail in this section.

Response I: The Department agrees that at least a partial modification is necessary in this section, which is reflected in the 15 Day Renotice filed January 31, 2008.

Comment J: Commenter states that the Department would do well to review the mail policies of the Federal Bureau of Prisons, which are based on national standards and incorporate good language about Warden oversight and First Amendment protection.

Accommodation: None.

Response J: The Department responds that it developed the amendment to its mail regulations in full consideration of all First Amendment implications. Notwithstanding the Federal Bureau of Prisons, there is no legal requirement that decisions to reject an incoming publication intended for an inmate must be made at the level of a Warden. It is lawful for authority in the Department to disallow correspondences to remain at the level of a Captain, or higher authority.

Comment K: Commenter states that due to a recent settlement agreement between commenter and the Department, modifications need to be made to the last two sentences in CCR subsection 3134(f) as follows: "Publications that are enumerated ~~of~~ on this centralized list are not allowed in any institutions. Local institutions are prohibited from adding items to the centralized list".

Accommodation: The Department agrees to amend the second to the last sentence of CCR subsection 3134(f) as follows – "Publications that are enumerated in this centralized text are not allowed in any institutions."

Response K: The Department agrees to amend the second to last sentence of Title 15 section 3134(f) to provide that publications "enumerated in" the centralized list are not allowed in the institutions, as reflected in the 15 Day Renotice filed January 31, 2008. No change is required for the last sentence.

Comment L: Commenter states that due to a recent settlement agreement between commenter and the Department, numerous modifications need to be made to CCR subsection 3134(h)-(i) that are depicted in **Attachment A**.

Accommodation: The Department agrees to make necessary grammatical corrections to CCR section 3134. The Department agrees to add a provision into CCR subsection 3134(i) to include in its notification to publishers that the publisher has a right to appeal. The Department also agrees in CCR subsection 3134(i) to change its response time for a disapproval notification to 15 calendar days.

Response L: The Department will make the recommended changes as reflected in the 15 Day Renotice filed January 31, 2008.

Comment M: Commenter states that they do not agree that the Department should create a centralized list of banned publication. Rather, the Department should emulate the Federal Bureau of Prisons policy regarding publications, which includes a prohibition against such centralized lists.

Accommodation: None.

Response M: The Department responds that it is creating a centralized list of banned publications to implement a settlement agreement in the matter of the *Prison Legal News v. Schwarzenegger*. The centralized list is intended to ensure uniformity among the state prisons about what publications are disapproved.

Comment N: Commenter states that due to a recent settlement agreement between commenter and the Department, numerous modifications need to be made to CCR section 3136 that are depicted in **Attachment B**.

Accommodation: The Department agrees with several of the recommended changes. ~~None.~~

Response N: The changes the Department agrees to are reflected in the 15 Day Renotice.

Comment O: Commenter states that due to a recent settlement agreement between commenter and the Department, numerous modifications need to be made to CCR section 3137 that are depicted in **Attachment C**.

Accommodation: The Department agrees with several of the recommended changes.

Response O: The changes the Department agrees to are reflected in the 15 Day Renotice.

Comment P: Commenter states that the proposed regulations contain inconsistent and confusing language. For example, sometimes the words “facilities” and “institutions” are used interchangeably, and should be consistent.

Accommodation: None.

Response P: The Department responds that the majority of mail issues revolve around its large institutions, each of which contains at least one mailroom. Each institution contains several facilities, depending on age and design of the institution. Additionally, the Department has numerous facilities around the state such as fire camps or parole offices, to name a few, each of which must maintain a small mail operation. Generally, the word institution is used when the issue is more of a global one, and facility is used when the subject matter is more closely aligned to smaller units. In fact, when significant emphasis is required with respect to a particular issue, the words institution/facility are combined.

COMMENTS #27:

Comment A: Commenter states that the proposed rule changes should be scrapped in their entirety because not a single inmate attorney was contacted or consulted in their formulation, and they are in violation of state and federal law as they are invasive of the attorney client relationship.

Accommodation: None.

Response A: The Department asserts that the amended regulations for mail adequately protect the privacy of attorney-client communications. CCR subsection 3144 provides that confidential mail, including attorney-client communications, will be opened and inspected for contraband only in the presence of the inmate and that correctional officers may not read the contents of that mail. These provisions were reviewed by several attorneys in and out of the Department, and were available for public comment, including comments by attorneys.

COMMENTS #28:

Comment A: Commenter states that recently he was discharged from the Department after winning a lawsuit against his case, and most of his mail was returned to sender or was forwarded to him some four months later. Commenter contends this problem could be avoided if the Department would allow an inmate to use the USPS Change of Address forwarding system upon parole or non-CDCR transfer.

Accommodation: None.

Response A: The commenter has always been allowed to utilize the United States Postal Service (USPS) Change of Address Cards with the USPS. These regulations do not change that. When the mail is returned to the USPS for forwarding, their automated system automatically checks for the most current address listed with them and forwards the mail accordingly.

Comment B: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response B: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment C: Commenter states that the number of legal document copies to be provided an indigent inmate should be sufficient to provide a copy to each opposing party as well as one for the inmate's records.

Accommodation: None.

Response C: The Department contends that the mail regulations afford indigent inmates a legally sufficient amount of free legal photocopying. CCR subsection 3138(g)(1) provides that institutions shall offer indigent inmates free copying of legal documents limited to the number of copies that are required by the court, one copy for a single opposing party, and one copy for the inmate's records. Also, CCR subsection 3138(g)(2) provides that if the inmate's case is accepted by the court, the need for future copies of legal documents will be evaluated on a case-by-case basis. The Department, to facilitate an indigent inmate's legal action, would provide free legal photocopying to multiple opposing parties if those opposing parties have their own separate representation, or if a court order or a statute requires that each opposing party must receive personal service of process. Otherwise, unless mandated by court order or by statute, the Department is not required to offer free copying beyond one copy for the opposing parties. Also see Commenter #9, Response F.

Comment D: Commenter states that the Department should also consider allowing indigent inmates to be provided copies of other legal documents for indigent inmates, such as revised tax returns.

Accommodation: None.

Response D: The Department contends that copies of legal documents that are needed to file court cases with the courts will continue to be provided to indigent inmates free of charge. The copying of any other documents, such as tax forms or "revised tax returns" for the inmates' records, shall require payment per current procedures. Current procedures require the inmate to sign an Inmate Trust Withdrawal and have a hold placed on their Trust Account for 30 days. If after 30 days the inmate is still indigent, the hold is removed and the inmate will have in effect received the copies free of charge. Indigent inmates can also continue to send those types of documents out and have their family or friends provide them with copies for their records.

COMMENTER #29:

Comment A: Commenter states that small non-profit publishers of periodicals may print them up at irregular intervals, even though that may be once a quarter, or perhaps even less. If that publisher is not on the Department's known list of publishers, and they don't mail their publications out at the specified times, staff could possibly trash them and give no notice as to why.

Accommodation: None.

Response A: See Commenter #18, Response F.

Comment B: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response B: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A

COMMENTER #30:

Commenter A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A

COMMENTER #31:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A

Comment B: Commenter states that they are glad the Department is setting a time frame within which an inmate will receive mail. However, each envelope should be stamped on the day it is received at the institution/facility mailroom so an inmate can see how long it took to be delivered.

Accommodation: None.

Response B: The Department contends that an additional stamp is not necessary, as the USPS automatically stamps a date on each piece of mail as the postage is being cancelled and delivers that mail to the Department mailrooms within a day or two of that date.

COMMENTER #32:

Comment A: Commenter states that the proposed regulations would too narrowly define a "legitimate legal services organization" as one consisting of "an established group of attorneys", and not include other legal organizations that provide litigation support services such as word processing, reproductions, filing of petitions and briefs, court and client correspondence, to reduce attorney fees, by prohibiting their legitimate use of the confidential mail process. This would also include legal document assistants. Perhaps a registry of legal services organizations could be listed with the Department's Office of Legal Affairs.

Accommodation: None.

Response A: See Commenter #2, Response A.

COMMENTER #33:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment B: Commenter states that many stakeholders in prison reform have, out of empathetic humanity, sent small amounts of money to the accounts of inmates not related to them. These modest sums allow otherwise indigent inmates to afford personal items and toiletries via the canteen system. To prohibit monetary contributions to those accounts from anyone other than immediate family is an untenable prospect.

Accommodation: The Department has made the decision to remove this stipulation. The belief is that there are sufficient procedures in place to monitor and impede the payment of drug debts from an inmates' fund.

Response B: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue that allows monies to be sent to non-family members.

Comment C: Commenter states that they are confused as to whether the 14 business day restriction for packages is for packages coming into the institution, or being received. They also express confusion as to what a lockdown is, or what constitutes a holiday period.

Accommodation: The Department will change the 14 business day restriction for consistency.

Response C: The Department contends that the 14 business day restriction pertains to incoming packages and the time frame the Department has to deliver them under normal circumstances. However, this has been changed to 15 calendar days for consistency, as per the 15 Day Renotice dated January 15, 2008. As to what constitutes a lockdown or a holiday period, see Commenter #19, Response H.

Comment D: Commenter states that small non-profit publishers of periodicals may print them up at irregular intervals, even though that may be once a quarter, or perhaps even less. If that publisher is not on the Department's known list of publishers, and they don't mail their publications out at the specified times, staff could possibly trash them and give no notice as to why.

Accommodation: None.

Response A: See Commenter #18, Response F.

Comment E: Commenter states that the new requirement that an attorney's return address must match the address listed with the State Bar should be removed. Many attorneys move their offices, and the State Bar doesn't always update the list immediately.

Accommodation: None.

Response E: See Commenter #11, Response A

Comment F: Commenter states that it is not fair for an inmate who has just truly become indigent to have to wait for 30 days before receiving indigent envelopes.

Accommodation: None.

Response F: The Department acknowledges that while it is unfortunate for any inmate to fall into indigent status, it is not practical to treat them as indigent immediately once they have insufficient funds. Inmates receive monies from a variety of sources, and can move into and out of indigent status on a regular basis. The Department contends that 30 days is a reasonable time period to require an inmate to be indigent prior to receiving indigent envelopes.

Comment G: Commenter states that before making some of these changes that will most likely slow the mail procedures down, the Department should check with all prisons to see which ones are delivering the mail the fastest, such as Donovan.

Accommodation: None.

Response G: See Commenter #19, Response A.

COMMENTS #34:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A

Comment B: Commenter states that many times magazines that have been paid for long in advance are being denied entry into the prison because they portray a soldier holding a rifle, or because they contain a picture of a model in a skimpy swimsuit that is deemed obscene for some unknown reason. Then when the inmate appeals the return of the publication, they are required to withdraw the appeal, and the magazine is returned to the inmate minus the "offensive" page. Somehow this seems a violation of the First Amendment.

Accommodation: None.

Response B: The Department contends that current regulations do not allow inmates to possess obscene material, offensive material, or material that threatens the safety and security of the institution. Pictures of a soldier with a weapon, or a woman in a swimsuit, are not, in and of themselves, reasons to deny a magazine. The soldiers' picture would need to be promoting a riot, overthrow of a government or some type of anarchy in order to be censored. For a magazine to be censored with a picture of the woman in a skimpy swimsuit there would have to be a display of "frontal nudity". Regardless, staff are not allowed to simply remove the picture and issue the magazine. The magazine is to be considered contraband and processed per policy.

Comment C: Commenter states that they are concerned that in CCR section 3139, the approval and/or denial criteria for who can correspond with one another are not stipulated in the proposed regulations. Without guidelines, prison officials can very easily disapprove an individual for correspondence, thus severing family ties.

Accommodation: None.

Response C: The Department contends that CCR section 3139 specifically did not list specific criteria for correspondence between Inmates/Parolees/Probationers for a reason. There shall be no restrictions except those outlined in CCR subsection 3139(e)

for inmates in restricted housing. The wardens will not be able to require or enforce any other types of restrictions.

Comment D: Commenter states that many stakeholders in prison reform have, out of empathetic humanity, sent small amounts of money to the accounts of inmates not related to them. These modest sums allow otherwise indigent inmates to afford personal items and toiletries via the canteen system. To prohibit monetary contributions to those accounts from anyone other than immediate family is an untenable prospect.

Accommodation: The Department has made the decision to remove this stipulation. The belief is that there are sufficient procedures in place to monitor and impede the payment of drug debts from an inmates' fund.

Response D: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue that allows monies to be sent to non-family members.

COMMENTER #35:

Comment A: Commenter states that the words "...at least..." should be stricken from the definition of what time period must pass before an inmate is deemed indigent as proposed in CCR subsection 3133(a)(5).

Accommodation: The Department agrees.

Response A: The Department has removed the words "at least" from that subsection as noted in the 15 Day Renotice issued January 31, 2008.

Comment B: Commenter states that requiring an inmate to not be able to have funds for one single First Class stamp for a period of 30 days prior to the request for indigent envelopes is not practical. Say an inmate is working on a response to the court on his writ, and yet has only been without funds for 10 days. Yet he must complete and mail back his response within 5 days. This would not work. Also, the language is vague in that staff could interpret the language to mean more than 30 days.

Accommodation: None.

Response B: See Commenter #19, Response D.

Comment C: Commenter states that frequently books are delivered to the wrong inmate, and the inmate that should have received the book is never discovered. This problem could be avoided by having the receiving inmate sign an "Acknowledgement of Receipt of Books", and have that kept in the mail room for a time.

Accommodation: None.

Response C: The Department contends that per departmental policy all inmates are physically identified by name and CDCR number before their mail or book(s) are delivered to them. Most of the books are routed through Receiving and Release for distribution to the inmates. Again, the inmates are physically identified by name and CDCR number before being issued their property.

COMMENTER #36 and #37:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A

Commenter #38:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment B: Commenter states that the new requirement that an attorney's return address must match the address listed with the State Bar should be removed. Many attorneys move their offices, and the State Bar doesn't always update the list immediately.

Accommodation: None.

Response B: See Commenter #11, Response A.

COMMENTER #39:

Comment A: Commenter states that under the proposed regulations, an entire literary work or magazine could be banned from being sent to an inmate if just a few sentences or an ad in the literary work were deemed to be obscene. This language can be interpreted such that even if a publication is allowed to come into the prison, it could be banned just on the basis that it contains an advertisement on how obscene material can be obtained.

Accommodation: None.

Response A: See Commenter #6, Response A. The Department also agrees that it is not beyond the realm of possibility that a publication could be perfectly harmless with the exception of one advertisement that explains how obscene material could be obtained. If the ad were merely directing the reader to go to some web site, that would be insufficient to disapprove the publication. But if the ad included some sexually explicit language as well as pictures, then it would likely be disapproved.

COMMENTER #40:

Comment A: Commenter states that inmates should be provided information about particular institutions mail policies upon arrival, because they can vary from institution to institution. Also, the regulations should identify which staff are to advise inmates of the mail policies.

Accommodation: None.

Response A: Per CCR section 3131 all inmates are informed of the mail procedures as part of their initial orientation, which takes place soon after their arrival. Each institution identifies the specific staff members responsible for conducting the orientation, handing out the institutions orientation booklet, and who is responsible for its update.

Comment B: Commenter states that it seems vague to direct staff to notify each newly arrived inmate of local procedures regarding mail. Also, often new inmates are not

advised of mail procedures, which create confusion for inmates and their correspondents.-

Accommodation: None.

Response B: The Department contends that generally mail procedures do not vary that much from institution to institution, particularly on what is allowed as subject matter in correspondence. Additionally, these regulations will further standardize the mail procedures to provide greater consistency for all the institutions.

Comment C: Commenter states that as most people outside a prison do not know all of the regulations regarding correspondence with inmates, it is not fair to deny them correspondence rights with an inmate because they violate the rules once.

Accommodation: None.

Response C: The Department contends that nothing in the current or proposed regulations state that persons outside of the prison are denied correspondence rights the first time they violate the rules. In fact, CCR section 3132, states "Departmental employees, inmates and persons corresponding with inmates must comply with the regulations set forth in this article and with approved facility mail procedures. Failure to do so may result in legal or administrative measures against the person or persons involved". Each case is; and will continue to be; investigated on an individual basis. The commenter is advised that all of the Department's regulations can be found on the Department's internet web site at www.cdcr.ca.gov.

Comment D: Commenter states that rarely does the Department adhere to the 7 day time frame to deliver mail to the inmate. Each envelope should be stamped on the day it is received at the institution/facility mailroom so an inmate can see how long it took to be delivered.

Accommodation: None.

Response D: The Department contends that an additional stamp is not necessary, as the USPS automatically stamps a date on each piece of mail as the postage is being cancelled and delivers it to the Department mailrooms within a day or two of that date. Every effort will be made by staff to deliver mail within the 7 day time frame, with the exception of holiday periods or lockdowns.

Comment E: Commenter states that Standard mail should also be subject to the 7 day time limitation for distribution in the same manner as First Class mail.

Accommodation: None.

Response E: The Department contends that the intent of the new regulations is to deliver all mail within 7 days, with the exception of holiday periods and lockdowns.

Comment F: Commenter states that there is no provision in the new regulations for First Class mail weighing more than 13 ounces, but only for 13 oz First Class mail or 16 oz Standard Mail. This is just a further attempt to limit what inmates may receive through the mail.

Accommodation: None.

Response F: A "personal correspondent" is not considered to be an attorney, a law firm, another state agency, bookstores that do mail order business, etc. It is "a personal correspondent" that is restricted from using Package Services (except Parole Clothing and Health Appliances) and limited to the restriction of 13 ounces, the maximum size of a First Class letter. The Department mailrooms do not have the resources necessary to process beyond a First Class letter for "personal correspondents". Current regulations allow each warden to establish an operational procedure, and nearly all of those have

limitations on the size of the letter and the number of pages that can be inserted. Using the USPS classifications of mail, and the limitations set for them, is a standardization of services throughout the Department. Additionally, mail coming in from confidential correspondents as defined in both the current and the proposed CCR section 3141 will not be limited in weight or postage classification.

Comment G: Commenter states the definition of “indigent inmate” appears to be restated in CCR subsection 3133(a)(5).

Accommodation: None.

Response G: The Department responds that the purpose of having a partial definition in CCR subsection 3133(a)(5) is to provide greater detail as to the requirement for an inmate to receive indigent envelopes.

Comment H: Commenter states that CCR subsection 3133(b)(1) is contradictory in that it is referring to outgoing inmate mail but its rules are applicable to “if addressed to any inmate”, or incoming mail.

Accommodation: None.

Response H: The Department contends that the commenter is mistaken. CCR subsection 3133(b)(1) states “(b) All incoming and outgoing mail shall be handled in accordance with the following: (1) All incoming mail shall be properly addressed. Appropriately addressed mail shall include the inmate’s name and department identification number. The mail should also include the address designated by the institution for inmate mail. The receiving institution is required to update any mail piece that does not reflect accurate housing or institutional location. Standard Mail must be addressed to an individual inmate, showing their name, CDCR number, and the address for the applicable institution.” Also, CCR subsection 3133(b)(2) references the addressing of outgoing mail.

Comment I: Commenter states that the phrase “designated staff” in CCR subsection 3133(b)(3) is vague and non-specific as to which staff are duly designated to read mail.

Accommodation: None.

Response I: The Department contends that this language is included because it could be staff positions in the mail room, staff positions in the housing units, staff assigned to the Investigative Services Unit, or any other staff position designated to assist with the processing, delivery, or investigation of mail. In times where there is a large volume of mail, additional staff are brought in to assist with the processing so that the mail can be delivered in a timely manner. To designate specific positions that would only be allowed to review mail would cause a delay in mail processing.

Comment J: Commenter states that it is apparent the Department is trying to limit where books may be sent from, and that some allowance must be built into the regulations for non-book stores to continue to send books to inmates, which has been happening for years.

Accommodation: None.

Response J: The Department contends that the commenter is not correct in stating that the Department is limiting how inmates can receive books. In fact, it is now easier for inmates to receive books that it has been previously. Any company who has a mail order business for books would be considered a bookstore by our definition. For example, Amazon.com is not a “brick and mortar” bookstore, but does a mail order business for books and would be considered a “book distributor”. Therefore, inmates are allowed to receive books from Amazon.com or any other book distributor.

Comment K: Commenter states that CCR subsection 3133(b)(5) is another duplication of (b)(3) and does not need to be adopted.

Accommodation: None.

Response K: The Department responds that security is highly important when it comes to the inspection of any item coming into and out of the prison system. CCR subsection 3133(b)(3) applies only to incoming mail and packages. CCR subsection 3133(b)(5) has of necessity been added to apply more broadly to any nonconfidential incoming or outgoing mail.

Comment L: Commenter states that subsection 3133(e) has been abused by Investigative Services Unit custody staff mercilessly because they have often delayed mail from being promptly mailed yet, never notify the inmate.

Accommodation: CCR subsection 3133(e) will now include language that states that the notice must be sent by staff when the delay exceeds 5 business days of receipt of the mail piece that was not mailed promptly.

Response L: The Department agrees that staff are to be held accountable for any delay in the processing of mail beyond 5 business days. This language was adjusted in the 15 Day Renote issued on January 31, 2008.

Comment M: Commenter states that 72 hours is not long enough to hold a newspaper before returning to sender because an inmate could be away from an institution longer, such as for medical reasons.

Accommodation: None.

Response M: The Department contends that the storage of newspapers is a fire hazard. The institutions do not have the capability for storage if inmates are anticipated to be gone for longer than a week. All mail is held if the inmate's absence from the institution is anticipated to be one week or less. If the absence is anticipated to be longer, the mail shall be forwarded. Newspapers, however, will only be held for 72 hours before they are forwarded or returned to sender.

Comment N: Commenter states that frequently housing staff will delay delivery of publications such as magazines in order to read them. The regulations should stipulate clearly that line staff are not to delay delivery of magazines for their own personal reading.

Accommodation: None.

Response N: The Department contends that staff are not; and never will be; allowed to circumvent the delivery of an inmate's mail because of personal use. This is a violation of the USPS regulations. When these regulations are codified and the memorandum addressing their use is issued, staff will again be reminded that this practice, if it exists, is illegal and will not be tolerated.

Comment O: Commenter states that it is not clearly spelled out just what happens to an inmate's mail if they are away from an institution for up to a week, or even somewhat longer. Would it be returned to sender marked that the inmate no longer resides there?

Accommodation: None.

Response O: The Department contends that per CCR section 3133, any inmate who is temporarily absent from the institution for less than one week will have their mail stored until their return. Daily newspapers will only be held for 72 hours. Newspapers delivered via the USPS will be held with the stored mail. If the inmate is anticipated to be gone longer than one week, then the mail shall be forwarded to their location if they are able to receive it, or returned to the sender as undeliverable.

Comment P: Commenter states that CCR subsection 3134(a)(1) shouldn't include Polaroid's because they can be modified by removing the back to allow them to be searched. Polaroid's are allowed at Pleasant Valley State Prison, and it hasn't been such a problem that they should be denied now.

Accommodation: None.

Comment P: The Department contends that while Pleasant Valley State Prison may have been an exception, Department policy has been and will continue to be not to allow Polaroid's to come in through the mail. It requires staff resources that the Department does not have to ensure that nothing has been secreted into the middle of the picture. There are numerous other methods for photo development such that the exclusion of Polaroid's does not put undue strain on an inmate's family or friends

Comment Q: Commenter states that CCR subsection 3134(a)(3) should be modified to also allow in postcards in addition to greeting cards.

Accommodation: None.

Response Q: The Department contends that the proposed regulations give inmates the ability to obtain through the mail more than enough stationary and envelopes to correspond. Also, the mail is not the only avenue available to inmates to obtain correspondence types of materials. The Department will not add postcards to the list of allowable stationary items that can come in via the USPS.

Comment R: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response R: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment T: Commenter states that the proposed regulations have a conflict with the inmate property Authorized Personal Property Schedule (APPS) because the APPS allow inmates to obtain photo albums from the Statewide Vendor Package Program. It does not seem appropriate to adopt new rules which conflict with the rules already in place.

Accommodation: The proposed regulations will be modified to state that photo albums will be made available through the inmate canteen and the Vendor Package Program.

Response T: The regulations have been modified as reflected in the 15 Day Renotice filed January 31, 2008.

Comment U: Commenter states that another aspect of CCR section 3134 that is not right is that there is no reason to arbitrarily return a letter or "unacceptable mail" to a correspondent without first notifying the inmate and explaining why the mail is not being provided to them.

Accommodation: None.

Response U: The Department contends that these regulations dictate that mail can only be returned if it violates one of CCR sections 3006, 3135, or 3138. CCR section 3136 states that inmates are to be notified if either incoming or outgoing mail violates Department rules and will not be issued. The inmate is advised in writing of the denial of the mail that is not being processed, and the inmate is given the right to appeal the

denial. The Department does not agree that denied mail should be retained in the mailroom pending an appeal. Inappropriate mail must be processed and returned to sender, whether that is the inmate or their correspondent.

Comment V: Commenter states that several items should be added to the list of allowable First Class Mail items, such as non-metallic ink pens, and photocopied material.

Accommodation: None.

Response V: The Department will not add pens to the list of acceptable items to be allowed to be sent in via regular mail for security reasons. Inmates have other approved means by which to obtain writing implements. CCR section 3134 already allows for newspaper clippings and Internet downloaded articles or electronic mail (e-mail). An actual photocopy of a written document is already allowable, and will continue to be allowable.

Comment W: Commenter states that there is no penological reason to mandate that metered reply envelopes that outsiders send to prisoners must be marked with postage enough to prepay the postage in full, and it is burdensome for inmates who seek to add stamps to metered envelopes so they have sufficient postage. Also, the requirement to add the language "NO POSTAGE STAMP NECESSARY POSTAGE HAS BEEN PREPAID BY" is unnecessary and should not have to be added. And if metered envelopes are to be limited in size, then that size should be mentioned in this subsection.

Accommodation: None.

Response W: See Commenter #9, Response E.

Comment X: Commenter states that CCR subsection 3134(c)(1) should spell out a consistent time frame for when inmates can send out a package. Some facilities allow a package to be sent out weekly, while some only every other month. Also the regulations should be specific as to whether inmates can mail out hobby craft items.

Accommodation: None.

Response X: The Department contends that at this time, the Department will continue to allow each institution/facility to regulate this workload.

Comment Y: Commenter states that the Department should abolish the system of requiring that packages be sent to an inmate only from vendors, and return to the previous policy of allowing packages to come from inmate correspondents.

Accommodation: None.

Response Y: The Department contends that several years ago revisions to the Vendor Package Program were properly filed with the Office of Administrative Law, properly vetted with the public, and finally filed with the Secretary of State. This program has been successful in reducing the amount of contraband being introduced into the institutions, and in standardizing the way packages can be sent into the institutions. The Department will continue with the current Vendor Package Program.

Comment Z: Commenter states that Title 15 subsection 3134(f) should be modified to allow for any publisher, book store, or vendor to send books to an inmate. Also, the "Centralized List" of disapproved publications should be posted at each facility law library and put on the Department's web site so the public can check to see which publications aren't allowed, and why. It should also be posted in each law library for inmates to review, and inmates should be allowed to appeal the placement of a publication on the centralized list directly to the Chief of Appeals.

Accommodation: None.

Response Z: The Department contends that it shall distribute a centralized list of disapproved publications that are prohibited as contraband. This is the only list that the Department circulates under CCR subsection 3134(f). The list of disapproved publications shall be available in the prison law libraries for inmate review.

Comment A-1: Commenter states that it is interesting that hard covers are removed from books that inmates receive, even though the law library is full of books with hard covers. Commenter feels it is senseless, however, to require that they should be removed in the presence of the inmate. The mailroom should remove the covers and properly tape them up, as there may be a time and place for the covers to be removed outside the presence of the inmate.

Accommodation: None.

Response A-1: The Department contends that the books that are ordered and obtained for the libraries come from an authorized vendor that has been screened to ensure that no contraband is being introduced inside the hard covers.

The reason for requiring the inmate to be present when the hardcover is being removed is to ensure that they will accept the book without the cover. Hardcover books are more expensive than paperback books, and they can become more readily unstable once the cover is removed.

Comment A-2: Commenter states that sometimes the mailroom will return mail to an inmate's correspondent for a particular reason, and the inmate is never notified. The policy should be that whenever any piece of mail is returned to sender, the inmate should always be notified in writing of which correspondent is getting what mail sent back, and why.

Accommodation: None.

Response A-2: CCR section 3136 states that any "incoming or outgoing mail/packages/publications addressed to or being sent by an inmate are withheld or disallowed, the inmate shall be informed via CDC Form 1819, Notification of Disapproval-Mail/Packages/Publications (Rev. 6/98) of the reason, disposition, name of official disallowing the mail/package/publication, and the name of the official to whom an appeal can be directed". Any incoming mail that is being returned to sender requires that the inmate be notified in writing. This has been, and will continue to be, Department policy.

Comment A-3: Commenter states that the Department has obviously overlooked the fact that inmates are human beings too, and they have feelings, many of which may be of a sexual nature. Inmates may want to express those feelings to a loved one, or a loved one may want to express such feelings to an inmate. The Department does not have the authority to implement rules which forbid an adult from writing another adult about topics of a sexual nature.

Accommodation: None.

Response A-3: The Department contends that regulations have been in place since 1996 limiting the display of obscene material. In 2003 the Department developed and codified regulations that restricted inmates from receiving or possessing sexually explicit material, including those in writing. These regulations are not new, and will remain in effect since they have reduced sexual harassment complaints. Also, see Commenter #6, Response A.

Comment A-4: Commenter states that there is some inconsistency between CCR sections 3134 and 3136 in that section 3134 orders any "unacceptable" mail to be

immediately returned to sender, where CCR section 3136 orders a form to be completed for any withheld mail.

Accommodation: None.

Response A-4: The Department contends that Title 15 section 3134 is referring to the items that are allowed and not allowed to come in with First-Class Mail. Since this language is straightforward and will be readily available to an inmate's personal correspondents, then items should not be coming in that are not allowed. Regardless, this section will reference that inmates are to be notified pursuant to Title 15 section 3136, since that is the current practice that is in place. CCR Section 3136 states that if any "incoming or outgoing mail/packages/publications addressed to or being sent by an inmate are withheld or disallowed, the inmate shall be informed via CDC Form 1819, Notification of Disapproval-Mail/Packages/Publications (Rev.-6/98) of the reason, disposition, name of official disallowing the mail/package/publication, and the name of the official to whom an appeal can be directed".

Comment A-5: Commenter states that often appeals relating to mail issues are somehow lost, and then withheld mail that an inmate was notified about is sent back to the sender because the 15 day time period to file an appeal has lapsed. The problem would be somewhat mitigated by extending the 15 day period with which to file an appeal to 30 days.

Accommodation: None.

Response A-5: The intent of these regulatory changes is to standardize the mail regulations statewide. Once these regulations are in place staff will be aware of their responsibilities with respect to mail and inmate appeals. The Department contends that the 15 day time frame with which to file an appeal relating to returned mail should be sufficient. Be advised that time frame could be extended in the future should the Department determine that it is not providing inmates sufficient time to file an appeal.

Comment A-6: Commenter states that the word "may" in Title 15 subsection 3138(b)(1) is too permissive. It will undoubtedly lead to indigent inmates being denied postage over one ounce for pending litigation. The word "may" should be deleted and institutions should be ordered to mail such items. There have been many times when an indigent inmate cannot obtain their indigent envelopes and the supplies to go with them. This subsection needs to specify exactly who is responsible for approving indigent requests and who will be responsible for issuing the indigent envelopes and supplies.

Accommodation: None.

Response A-6: The commenter is incorrect in their statement that an inmate would be "denied postage over one ounce for pending litigation". The commenter is advised that CCR subsection 3138(b) was written to allow inmates to mail out indigent letters that weigh more than one ounce, which is the only amount that the Department was previously required to mail out for purposes other than pending litigation, the courts, or the AG's office. These sections allow inmates to go to staff and obtain the necessary postage for an indigent letter weighing more than one ounce. In addition, CCR subsection 3138(g) states that indigent inmates shall have free and unlimited mail to any court or to the AG's Office, in addition to the indigent supplies for 5 one ounce letters.

Comment A-7: Commenter states that it doesn't make sense to have indigent inmates constantly ordering only five envelopes a week. Rather they should be allowed 20 envelopes a month to save on staff time.

Accommodation: None.

Response A-7: The Department contends that the limit of indigent supplies to 5 per week has been regulatory for some time. This is not new language and will remain as written. Additionally, the commenter is advised that there are some months that have 5 weeks in them. This allows an indigent inmate to receive 25 one-ounce letters that month instead of the 20 that was suggested. This was the logic used to generate the current regulations.

Comment A-8: Commenter states that an apostrophe should be added to the word "Generals" in CCR subsection 3138(g).

Accommodation: Add an apostrophe to "Generals" in Title 15 subsection 3138(g).

Response A-8: The edit is reflected in the 15 Day Renotice issued January 31, 2008.

Comment A-9: Commenter states that the Department has a responsibility to provide copies of legal documents for indigent inmates that are involved in court proceedings, and CCR section 3138 as proposed is rather vague about that obligation. Also, that section should be specific about what writing supplies should be provided to an inmate because it will vary from one institution to another.

Accommodation: The Department advises that changes will be made to CCR section 3138 to address these issues. The section will now state "In addition to indigent writing supplies and postage for the five (5) one (1) ounce letters per week, indigent inmates shall have free and unlimited mail to any court or AG's Office. Upon request, institutions shall also provide indigent inmates free copying; and postage; of the legal documents limited to the number of copies of a document required by the court."

Response A-9: The changes as noted above have been made as per the 15 Day Renotice issued on January 31, 2008.

Comment A-10: Commenter states that the rules as set forth in CCR section 3139 are too strict because they allow too much discretion from Warden to Warden as to correspondence allowed between inmates/parolees/probations. Local facilities often deny correspondence requests more because of laziness than any threat to security.

Accommodation: The Department contends that the commenter is not totally correct. Current regulations allow each Warden to decide the restrictions placed on correspondence between inmates. The proposed regulations limit the Wardens by allowing them only the ability to restrict correspondence between inmates if they are housed in a SHU, ASU, or PSU. The proposed language will have a correction made to its formatting to clearly indicate that the limitations are only applicable to inmates housed in the above mentioned settings.

Response A-10: A revision will be made to the text reflected in the 15 Day Renotice issued January 31, 2008 noting that restrictions on correspondence between inmates will be imposed if one or both of the correspondents are housed in a restricted housing unit.

Comment A- 11: Commenter states that confidential correspondents as set forth in CCR section 3141 should be expanded to include the Office of Internal Affairs, the Office of the Inspector General, county agencies such as the Health Department, Amnesty International, and other inmate advocacy groups that provide legal services for inmates. Confidential correspondents should also include licensed mental health professionals outside the prison system, and ordained/licensed religious persons.

Accommodation: The Department contends that there is no requirement to expand the CCR subsection 3141(b) list of persons and entities with whom an inmate can confidentially correspond, to include the person and entities that the commenter suggests. Nevertheless, the Department agrees to expand the list to include the

Department's Ombudsman's Office. The Ombudsman's Office assists the Secretary in identifying and resolving issues at the institutions relating to staff, inmates, inmate families, legislative bodies, special interest groups, and community-based organization. This office also gives management advice and consultation on issues affecting the full range of Departmental functions.

Response A-11: The Department will amend Title 15 section 3141(b)(8) as follows – Inmates may correspond confidentially with “. . . (8) The Secretary, Undersecretary, Chief Deputy Secretaries, Executive Director, Assistant Secretaries, Division Directors, Deputy Directors, Associate Directors, the Chief, Inmate Appeals, and the Lead, Ombudsman's Office, of the Department,” as reflected in the 15 Day Renotice issued on January 31, 2008.

Comment A-12: Commenter states that the language contained in proposed CCR section 3142 will not work because often staff will briefly scan outgoing confidential mail before having the inmate seal the envelope. The language should be amended such that the inmate “shake out” the contents and then seal the envelope in front of staff. Actually, no custody staff should be handling confidential mail.

Accommodation: None.

Response A-12: The Department contends that employees are not allowed to read or scan the documents. The proposed regulations state that the documents are to be removed from the envelope upside down. The intent of confidential mail is to allow inmates the ability to correspond “confidentially” with specific persons. Custody staff will continue to handle and properly apply their signature and badge number to all outgoing confidential mail.

COMMENTER #41:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment B: Commenter states that small non-profit publishers of periodicals may print them up at irregular intervals, even though that may be once a quarter, or perhaps even less. If that publisher is not on the Department's known list of publishers, and they don't mail their publications out at the specified times, staff could possibly trash them and give no notice as to why.

Accommodation: None.

Response B: See Commenter #18, Response F.

Comment C: Commenter states that requiring an inmate to not be able to have funds for one single First Class stamp for a period of 30 days prior to the request for indigent envelopes is not practical. Say an inmate is working on a response to the court on his writ, and yet has only been without funds for 10 days. Yet he must complete and mail back his response within 5 days. This would not work. Also, the language is vague in that staff could interpret the language to mean more than 30 days.

Accommodation: None.

Response C: The Department contends that the actual definition for an indigent inmate has been expanded to include the language that an “Indigent inmate means an inmate who has been without the funds necessary to pay for a single First-Class postage stamp for 30 days prior to the request for indigent envelopes”.

The copying or mailing of legal documents to the courts does not have the same requirements nor was it ever a problem when the regulations simply said “wholly without funds at the time they were eligible for withdrawal of funds for canteen purchases”, which is approximately every 30 days.

Comment D: Commenter states that is no clarification as to how long a holiday season extends, and that the term “season” is ambiguous and could cover holidays for all major religions. Also, how can a lockdown affect the receiving of a package, other than as punishment for the group of people that are under lockdown. Sometimes packages are delayed for months, thereby making some contents outdated, and making it impossible to get refunds for items not wanted.

Accommodation: None.

Response D: See Commenter #11, Response A.

Comment E: Commenter states that many stakeholders in prison reform have, out of empathetic humanity, sent small amounts of money to the accounts of inmates not related to them. These modest sums allow otherwise indigent inmates to afford personal items and toiletries via the canteen system. To prohibit monetary contributions to those accounts from anyone other than immediate family is an untenable prospect.

Accommodation: The Department has made the decision to remove this stipulation. The belief is that there are sufficient procedures in place to monitor and impede the payment of drug debts from an inmates’ fund.

Response E: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue that allows monies to be sent to non-family members.

Comment F: Commenter states that the new requirement that an attorney’s return address must match the address listed with the State Bar should be removed. Many attorneys move their offices, and the State Bar doesn’t always update the list immediately.

Accommodation: None.

Response F: See Commenter #11, Response A.

COMMENTER #42

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

COMMENTER #43:

Comment A: Commenter states that currently the regulations allow inmates to subscribe to, purchase, or have items sent in to them such as newspapers, periodicals, magazines or books. If purchased by a third party, they must be sent in from the

vendor. However, that privilege is regularly being denied to inmates housed in Receptions Centers, and that practice is even in writing in the Reception Center flyer. Inmates must stay in Reception Centers for long periods of time, and that is difficult with little or no reading material.

Accommodation: None.

Response A: The Department contends that currently CCR section 3131 allows each Warden to have a plan of operation for inmate mail. While the property regulations allow the inmate the ability to possess these types of material, CCR section 3131 allows each Warden, through their plan of operation, to determine locally whether or not to allow inmates to order or subscribe to them. When the new regulations are codified, each Warden will have to abide by the regulations. The new regulations will reference all inmates in whole and will not spell out differences for Reception Center inmates versus General Population inmates.

Comment B: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response B: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment C: Commenter states that many stakeholders in prison reform have sent small amounts of money to the accounts of inmates not related to them. These modest sums allow otherwise indigent inmates to afford personal items and toiletries via the canteen system. To prohibit monetary contributions to those accounts from anyone other than immediate family is an untenable prospect.

Accommodation: The Department has made the decision to remove this stipulation. The belief is that there are sufficient procedures in place to monitor and impede the payment of drug debts from an inmates' fund.

Response C: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue that allows monies to be sent to non-family members.

Comment D: Commenter states that the proposed regulations do not include organizations other than law firms and attorneys with which to confidentially correspond. Inmates should be able to confidentially correspond with their pastor or with a medical or mental health professional.

Accommodation: None.

Response D: The Department contends that the reason professionals other than attorneys are not included as confidential correspondents is because the Department provides medical and mental health, and pastoral, services. The Department does not provide legal services, however.

COMMENTS #44:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being

required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

COMMENTER #45:

Comment A: Commenter states that rarely does the Department adhere to the 7 day time frame to deliver mail to the inmate.

Accommodation: None.

Response A: The Department contends that every effort will be made by staff to deliver mail within the 7 day time frame, with the exception of holiday periods or lockdowns.

Comment B: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response B: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment C: Commenter states that the proposed regulations will now limit first class mail to only 13 ounces, which is much too restrictive and prevent correspondents from sending in something like a tablet. One must question the intent of the weight limit.

Accommodation: None.

Response C: The Department contends that personal correspondents are the only group of correspondents that are being restricted to the 13 oz. weight requirement. USPS regulations state that a First Class letter can weigh no more than 13 oz. Mail that weighs more than 13 oz. would have to be sent as overnight or priority mail. Using the USPS classification of mail, and the limitations set for them, is a standardization of services throughout the Department. Additionally, mail coming in from confidential correspondents, law firms, state agencies, etc. as defined in both the current and the proposed CCR section 3141 will not be limited in weight or postage classification.

Comment D: Commenter questions when the time requirement for the delivery of packages to inmates actually begins, and what the ramifications are to the Department for not meeting those requirements.

Accommodation: None.

Response D: The Department contends that the timing requirement for packages would begin once the package arrives at the institution. It is in the best interest of the Department to process packages in a timely fashion due to limited space in the institutions. The primary resource needed for the processing of packages is staff; this resource is pressed during holiday periods and coming off lockdowns.

Comment E: Commenter states that the proposed regulations are a direct violation of inmate's constitutional rights with respect to what constitutes obscenity. For example, under the proposed regulations, an entire literary work could be banned from being sent to an inmate if just a few sentences in the literary work were deemed to be obscene.

Also, while the new regulations make a gallant effort to define obscenity, it is fruitless because that is a subject matter that is so subjective that it can only be open to interpretation that will vary from one person to the next. Finally, this language can be interpreted such that even if a publication is allowed to come into the prison, it could be banned just on the basis that it contains an advertisement on how obscene material can be obtained.

Accommodation: None.

Response E: See Commenter #6, Response A.

Comment F: Commenter states that many stakeholders in prison reform have sent small amounts of money to the accounts of inmates not related to them. These modest sums allow otherwise indigent inmates to afford personal items and toiletries via the canteen system. To prohibit monetary contributions to those accounts from anyone other than immediate family is an untenable prospect.

Accommodation: The Department has made the decision to remove this stipulation. The belief is that there are sufficient procedures in place to monitor and impede the payment of drug debts from an inmates' fund.

Response F: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue that allows monies to be sent to non-family members.

Comment G: Commenter states that a memo was recently issued at Valley State Prison stating that stamps can no longer be sent in to inmates through the mail. This arrogance is very disturbing.

Accommodation: Postage stamps will continue to be sent in by correspondents, and noted in the 15 Day Renotice dated January 31, 2008.

Response G: The Department will alter language on this issue to state that postage stamps can be sent in by correspondents. The number of postage stamps will be limited to forty unless there is a rate change; then the intent is forty postage stamps at the old rate and forty postage stamps at the amount needed to equal the new rate). The commenter is advised that Valley State Prison for Women is continuing to allow postage stamps to come in via the mail.

COMMENTER #46:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any venue that they choose. Also, see Commenter #1, Response A.

Comment B: Commenter states that many stakeholders in prison reform have sent small amounts of money to the accounts of inmates not related to them. These modest sums allow otherwise indigent inmates to afford personal items and toiletries via the canteen system. To prohibit monetary contributions to those accounts from anyone other than immediate family is an untenable prospect.

Accommodation: The Department has made the decision to remove this stipulation. The belief is that there are sufficient procedures in place to monitor and impede the payment of drug debts from an inmates' fund.

Response B: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue that allows monies to be sent to non-family members.

COMMENTER #47:

Comment A: Commenter states that the provision to deliver all First Class mail to inmates within 7 days of receipt in the mailroom is a good goal.

Accommodation: None.

Response A: The Department contends that the 7 day mail delivery time frame is a goal the Department will strive to achieve, with the exception of holiday periods and lockdowns.

Comment B: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response B: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment C: Commenter states that that there is no provision in the new regulations for First Class mail weighing more than 13 ounces, but only for 13 oz First Class mail or 16 oz Standard Mail. This is just a further attempt to limit what inmates may receive through the mail.

Accommodation: None.

Response C: See Commenter #40, Response F.

Comment D: Commenter states that the list of allowable enclosures in incoming mail is too limited as it does not provide for newspaper/magazine clippings, photocopies, hardcopy materials from the internet, postcards, or writing implements such as pencils or pens. Further, the language "including, but not limited to" invites different mailrooms to interpret the regulations differently.

Accommodation: The proposed regulations regarding this subject have been modified per the 15 day Renotice.

Response D: See Commenter #1, Response G.

Comment E: Commenter states that recently correspondence sent in to an inmate that includes a page from a publication has been returned, presumably because that page can only be a photocopy. Although the proposed regulations do not preclude enclosing articles, the regulations should specifically include a statement to the effect that articles, essays, stories, diagrams, and other information, whether written, typed, or printed, not posing a security risk, may be enclosed, whether in original or a photo copy.

Accommodation: None.

Response E: The Department contends that the regulations will allow for written documents, newspaper clippings, Internet downloaded documents/articles, photocopies of clippings, or emails to be received into the institution if the contents do not violate any section of the regulations.

Commenter #48:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Commenter #49:

Comment A: Commenter states that the Department has obviously overlooked the fact that inmates are human beings to, and they have feelings, many of which may be of a sexual nature. Inmates may want to express those feelings to a loved one, or a loved one may want to express such feelings to an inmate. The Department does not have the authority to implement rules which forbid an adult from writing another adult about topics of a sexual nature.

Accommodation: None.

Response A: See Commenter #40, Response A-3.

Commenter #50:

Comment A: Commenter states that it would be best if the Department checked with other institutions to see which had the best mailrooms.

Accommodation: None.

Response A: The Department contends it has developed these changes in the regulations to more effectively standardize mailrooms throughout the state, and to conform to Federal mail regulations. Mail staff throughout the state were consulted.

Commenter #51:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response B: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Commenter #52:

Comment A: Commenter supports the regulation language stating that First Class mail must be delivered to an inmate with 7 days of receipt from the Post Office.

Accommodation: None.

Response A: The Department contends that it will endeavor to meet this goal, with the exception of holiday periods and lockdowns.

Comment B: Commenter states that small non-profit publishers of periodicals may print them up at irregular intervals, even though that may be once a quarter, or perhaps

even less. If that publisher is not on the Department's known list of publishers, and they don't mail their publications out at the specified times, staff could possibly trash them and give no notice as to why. This change would have a strong adverse impact on the ability of inmates to receive some publications which is clearly a violation of first amendment rights.

Accommodation: None.

Response B: See commenter #19, Response F.

Comment C: Commenter expressed thanks for allowing children's drawings to be sent in to an inmate.

Accommodation: None.

Response C: The Department is aware of the rehabilitative importance of the connection between an incarcerated parent and their children.

Comment D: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response D: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Commenter #53:

Comment A: Commenter states that the revised regulation in section 3140 now stipulates that generally inmates are not eligible to receive benefits from the Veteran Affairs (VA), and inmates may not even be eligible to receive tax refund checks. The presumption that inmates cannot get VA disability payments is contrary to public law. Inmates are not civilly dead and have rights to privacy when dealing with the federal government for disability payments. Also, some inmates are owners in business and are not required to "de-invest" in stocks or bonds. They may have excess payroll withholding taxes that need to be refunded to them. The Department does not have the resources to investigate every V.A. check or tax refund before depositing the amount in the trust account.

Accommodation: None.

Response A: The Departmental policy on these types of funds will be as stated in CCR section 3140. This section does not state that inmates are not entitled; rather it states that they may not be. Therefore, an inquiry into the legitimacy of the funds is needed since there have been numerous instances of fraud relative to these types of funds in the past.

Commenter #54 and #55:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Commenter #56:

Comment A: Indigent inmate is defined as an inmate who cannot afford to pay for a single First Class stamp, which is way too restrictive. First, an inmate with funds in a trust account must use some of those funds to buy necessities from the canteen, such as shampoo. CCR subsection 3138(a) provides an indigent inmate sufficient postage for 5 one-ounce letters. If both provisions are enacted, an inmate who would qualify to receive enough postage to send 5 letters may now only send 1 if they have 39 cents on the books.

Accommodation: Language in CCR section 3138 has been changed for clarification as per the 15 day Renotice filed January 31, 2008.

Response A: The Department contends that CCR section 3133 will clarify that the definition of an indigent inmate is one who has \$1.00 or less in the Trust account for 30 consecutive days. Inmates who have a trust account balance of more than \$1 for 30 consecutive days are not indigent, and must pay for their own postage. Should they choose to use their funds for canteen, they will need to wait for 30 consecutive days when they have \$1.00 or less in their account to qualify for the 5 one-ounce letters and other supplies as defined in CCR section 3138. The purpose of this regulation is to allow inmates who are truly indigent the ability to correspond with their attorneys, friends, and family.

Comment B: It is unjustified to allow indigent inmates sufficient postage to send mail to the AG's office as provided in CCR subsection 3138(g), but not their own attorney. In other words, mail is free and unlimited to the attorney representing Corrections, but not the inmate's own attorney.

Accommodation: None.

Response B: The Department asserts that CCR subsection 3138(g) provides that inmates can send free and unlimited mail to a court or to the AG to implement the law that all inmates must have adequate access to the court system. The law mandates that indigent inmates must be able to advance their legal claims to a court and their legal materials be sent to a court without any costs. But that law has not been extended to mean sending unlimited legal related material to an inmate's own attorney. An inmate is more likely to send a vast amount of material to their attorney, such as their entire Central File, than an inmate would to the AG or to the court. An inmate who has attorney representation also is generally presumed to have more resources available and thus be in less need of free postage and photocopying than an inmate without an attorney. The Department contends that it does not need to include the inmate's attorney into CCR subsection 3138(g).

Comment C: Commenter states that CCR subsection 3139(f) allows a facility to disapprove requests for inmate-to-inmate correspondence when the inmates are not immediate family members, co-litigants or natural parents. This restriction was struck down by the courts several years ago, and it should be that each request for correspondence would be evaluated on a case by case basis.

Accommodation: See Accommodation for Commenter #6, Response C.

Response C: There is an error in the formatting. The proposed regulations limits the Wardens, allowing them only the ability to restrict correspondence between inmates if they are housed in a SHU, ASU, or PSU. The proposed language will have a correction made to its formatting to clearly indicate that the limitations are only applicable to inmates housed in the above mentioned settings.

Comment D: Commenter states that allowing an institution up to 7 calendar days with which to deliver mail is just too long. Several years ago mail was delivered to an inmate the same day it was received at the institution.

Accommodation: None.

Response D: The Department contends that mailroom staffing is similar at this time to what it has been for decades, and mail has been delivered within a 7 day period from the time it was received at the institution. The Department also contends that the 7 day delivery goal is appropriate and realistic in light of available resources. The reason this language has been included in the regulatory text is to ensure that institutions do not go beyond the 7 day time frame, with the exception of holidays and lockdowns. Also, see Commenter #10, Response C.

Comment E: Commenter states that periodicals such as newspapers and magazines are time sensitive and should be delivered within 24 hours of receipt by the institution.

Accommodation: None.

Response E: The Department contends that newspapers have always been delivered the day they are received at the institution. Also, see Commenter #10, Response C.

Comment F: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response F: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment G: Commenter states that there should not be a restriction against inmates receiving California lottery tickets. This does not constitute gambling on the part of the inmate. If an inmate were to win the lottery, this would be great news for their victim to whom restitution is owed. It also supports our state's school system.

Accommodation: None.

Response G: The Department contends that CCR section 3009 does not allow inmates to participate in any form of gambling. Lottery tickets are a form of gambling and inmates will not be allowed to receive them through any means.

Comment H: Commenter states that allowing for the delivery of packages and special purchases for up to 14 days, and longer during holidays and lockdowns, is not appropriate.

Accommodation: None.

Response H: See Commenter #11, Response A.

Comment I: Commenter states that the proposed regulations are a direct violation of an inmate's constitutional rights with respect to what constitutes obscenity. For example, under the proposed regulations, an entire literary work could be banned from being sent to an inmate if just a few sentences in the literary work were deemed to be obscene. Also, this language can be interpreted such that even if a publication is allowed to come into the prison, it could be banned just on the basis that it contains an advertisement on how obscene material can be obtained

Accommodation: None.

Response I: See Commenter #6, Response A.

Comment J: Commenter states that there is no penological reason to restrict frontal nudity. Nudity or viewing of nudity has never been shown to promote crime or to deter (sic) any institutional interest.

Accommodation: None.

Response J: The Department contends that regulations have been in place since 1996 limiting the display of obscene material. In 2003 the Department submitted and codified regulations that restricted inmates from receiving or possessing sexually explicit material, including those in writing. These regulations are not new and will remain in effect since they have reduced sexual harassment complaints.

Commenter #57:

Comment A: Commenter states that the proposed regulations contain inconsistent and confusing language. For example, sometimes the words “facilities” and “institutions” are used interchangeably, and should be consistent.

Accommodation: None.

Response A: The Department responds that the majority of mail issues revolve around its large institutions, each of which contains at least one mailroom. Each institution contains several facilities, depending on age and design of the institution. Additionally, the Department has numerous facilities around the state such as fire camps or parole offices, to name a few, each of which must maintain a small mail operation. Generally, the word institution is used when the issue is more of a global one, and facility is used when the subject matter is more closely aligned to smaller units. In fact, when significant emphasis is required with respect to a particular issue, the words institution/facility are combined.

Comment B: Commenter states that the definition of “Indigent Inmate” be simplified to: “An inmate who has been without the funds necessary to pay for a single First-Class stamp for 30 continuous days.”

Accommodation: Language has been adjusted as per the 15 Day Renotice filed on January 31, 2008.

Response B: The Department contends that there was an error in the formatting of that definition. This will be corrected to show that an indigent inmate is one who has been without the funds necessary to pay for a single First Class postage stamp for at least 30 calendar days prior to the request for indigent envelopes.

Comment C: Commenter states that all local operating procedures should be eliminated, and that one Department wide policy be enforced throughout the state.

Accommodation: None.

Response C: See Commenter #9, Response A.

Comment D: Commenter requests that there be no weight limit for a First Class letter, as letters to government officials are usually heavier than 13 ounces.

Accommodation: None.

Response D: See Commenter #1, Response H.

Comment E: Commenter requests that the definition for “Indigent Inmate” be included in the language contained in CCR subsection 3133(a)(5).

Accommodation: None.

Response E: The Department has adjusted the definition of “Indigent Inmate” as reflected in the 15 Day Renotice. The Department does not agree it is necessary to repeat the definition in CCR subsection 3133(a)(5).

Comment F: Commenter states that with respect to outgoing inmate mail, if it is addressed to someone other than an inmate, why does it need to include the sending inmate’s identification number, or any other inmate information, other than it came from a state prison?

Accommodation: None.

Response F: The Department contends that all outgoing inmate mail will be properly addressed so that the receiver will know exactly who the mail is from, not just that it is from a state prison. Additionally, the ability to know who the sender is keeps inmates from illegally using another inmate’s indigent envelopes; it is a way for staff to verify that the sender is in fact indigent.

Comment G: Commenter states that the definition of a “publication” should be expanded to include CD’s. There are many publishers and bookstores that do mail order business that are willing to send music CD’s through the mail, the same as any other publication.

Accommodation: None.

Response G: The Department contends that at this time the Department will not allow CD’s to come in from personal correspondents or publishers. The Department does not have the resources necessary to screen every CD to ensure that they have not been tampered with, as compared to material in written format that can be easily scanned.

Comment H: Commenter states that there should be a uniform policy governing the size of calendars. A reasonable regulation would allow a calendar to be up to 17” by 11”, or 8 ½ by 11”, when folded.

Accommodation: None.

Response H: The Department contends that the inmate property regulations, CCR section 3190 through section 3195, govern the size of a calendar and the inmate’s ability to possess one. Calendars are limited in size 12 inches by 12 inches, with no metal spirals. The mail regulations simply allow them to be sent in from an inmate’s personal correspondent.

Comment I: Commenter states that there should be a standard for the amount and the color of writing paper an inmate may be allowed to receive in the mail, and it should not exceed 500 sheets of paper.

Accommodation: The Department will add language to clarify what kind of colored paper is allowable, and to ensure that internet items and newspaper clippings are allowable in First-Class mail, as noted in the 15 Day Renotice filed January 31, 2008. Also, it is difficult to anticipate how an inmate could accumulate up to 500 pages of writing paper due to the limitation of weight for each First Class piece of mail.

Response I: See Commenter #9, Response D.

Comment J: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response J: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment K: Commenter requests clarification of photo albums, acknowledging that they can be sent in quarterly packages or purchased at the canteen, and if that policy will change.

Accommodation: None.

Response K: See Accommodation and Response to Commenter #40

Comment L: Commenter states that all institution libraries should be required to post all current postal rates, foreign and domestic, and to have a set of postal scales so that an inmate can know the proper postage of outgoing mail before it is sent to the mailroom.

Accommodation: None.

Response L: The Department contends that the suggestion will be taken under advisement. At this time, there will be no directive to establish this procedure.

Comment M: Commenter states that items allowed in approved vendor packages vary greatly from institution to institution. Regulations should be put in place to eliminate an institution's ability to disapprove otherwise Departmentally approved items.

Accommodation: None.

Response M: The Department contends that although the above comment does address an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to GC Section 113435.9, it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment

Comment O: Commenter states that inmates should be allowed to receive all publications that are allowed to be sent through the USPS. Institutions should not be allowed to ban publications unless they are posted on the Department's centralized list.

Accommodation: None.

Response O: See Commenter #26, Comment M, and Commenter #34, Comment B.

Comment P: Commenter states that a clarification should be made as to what maps an inmate is allowed to have. Obviously they can't have one of the area their institution is located. State law mandates that inmates be allowed National Geographic maps without restraint, but they are still being removed from the magazine.

Accommodation: None.

Response P: The Department contends that the issue of what maps an inmate can and can not have is irrelevant. Mailroom staff are not allowed to remove pages from magazines in order to circumvent the regulations and deliver them to inmates. The magazine either complies with the regulations and is allowed, or does not and is handled accordingly. Common sense would mandate that for security reasons maps would be classified as escape paraphernalia. Regardless, for the record maps of other countries would probably not be deemed to be a security threat.

Comment Q: Commenter requests a standard implementation of how much writing paper, envelopes, and writing implements an indigent inmate may receive.

Accommodation: None.

Response Q: The Department contends that the purpose of these regulations is to standardize all mail procedures. Indigent inmates will receive 5 envelopes and postage sufficient to mail a First Class letter, a writing implement and sufficient paper to write 5 first class letters. Previously an inmate would have to wait 30 days from when they spent the last of their funds to be declared indigent; this has not changed. What has changed is that they no longer have to be wholly without funds. So those inmates with a few cents in their accounts, \$1.00 or less, can now legally be declared indigent and receive indigent writing supplies and postage. All inmates are to request indigent status and supplies through the Inmate Trust Account Office. Additionally, CCR section 3138 requires all institutions to issue indigent writing supplies on a weekly basis.

Comment R: Commenter states that in CCR subsection 3138(g), "Attorneys General Office" should be changed to "Attorney General's Office".

Accommodation: The change is reflected in the 15 Day Renotice filed January 31, 2008.

Response R: The Department agrees.

Comment S: Commenter states that indigent inmates should be allowed unlimited free copies of documents to provide to the courts.

Accommodation: None.

Response S: See Commenter #9, Response F.

Comment T: Commenter states that an inmate might not always know when their attorney is in good standing or is in active status. There is no way to know the status of an out of state attorney. An inmate should be able to maintain confidential status with their attorney regardless of that attorney's status with the State Bar.

Accommodation: None.

Response T: See Commenter #10, Response I.

Comment U: Commenter questions if Foreign Consular's include all embassies and the United Nations (UN), as well as those bodies governed by the United Nations.

Accommodation: None.

Response U: A Foreign Consular is a separate entity from the UN and the various bodies governed by the UN. The Foreign Consular is housed in their nation's embassies. They represent their country and provide assistance to their citizens.

Comment V: Commenter states that when outgoing confidential mail is being processed, the words "confidential mail" or "legal mail" should appear on the face of the envelope.

Accommodation: None.

Response V: The Department contends that CCR section 3142 states, "The word "confidential" shall appear on the face of the envelope. Failure to do this will result in the letter being processed as regular mail or being returned to the inmate if for any reason the mail cannot be processed as regular mail".

Comment W: Commenter states that facility librarians should be able to accept outgoing inmate confidential or legal mail. At many institutions the envelopes for legal mail are purchased in the library and the addressing of those envelopes must be done there, so it makes sense for the librarian to deposit legal mail in the appropriate depository.

Accommodation: None.

Response W: The Department contends that the intent of confidential mail is to allow inmates the ability to correspond “confidentially” with specific persons. Designated staff will continue to handle and properly apply their signature and badge number to all outgoing confidential mail.

Comment X: Commenter states that a committee should be formulated to oversee all Institutional mailrooms and processing facilities.

Accommodation: None.

Response X: The Department contends that it is standardizing mailroom practices and policies with these regulations and the Department Operations Manual. After they are in place, the mailrooms will be required to update their procedures within a specified time frame and will then be audited for compliance. Thereafter, institutions will then have the mailrooms audited as part of their annual audit. The Division of Adult Institutions is responsible for overseeing all institutional mailrooms and processing facilities.

COMMENTER #58:

Comment A: Commenter states that the proposed regulations restrict an inmate from receiving cotton paper or writing paper other than paper that is white or yellow lined.

Accommodation: The Department will add language to clarify what kind of colored paper is allowable.

Response A: The Department contends that writing paper will be limited to white or yellow lined paper. Legal paper is only limited to “no cotton”. However, just to be clear the Department will insert the following language: (9) Legal paper; to include colored paper required by court rules (no cotton paper). The changes have been included in the 15-Day Renotice dated January 31, 2008.

Comment B: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response B: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment C: Commenter states that they agree that the Department should create a centralized list of banned publication. However, they should be made available for inmates to know if their publication is banned.

Accommodation: None.

Response C: The Department contends that banned publications lists will be made available. Also, see Commenter #26, Response M.

Comment D: Commenter expresses concern over what a clear definition of obscene would be.

Accommodation: None.

Response D: See Comment #6, Response A.

Comment E: Commenter states that CCR section 3139 is constitutionally flawed with respect to disallowing inmates to correspond with inmates in other state jurisdictions.

The restriction on communication to other state jurisdictions by California runs contrary to many well known court cases.

Accommodation: None.

Response E: The Department contends that CCR section 3139 does not disallow inmates from corresponding with other inmates. The regulation instead lawfully requires a written authorization from a Warden or designee before an inmate may correspond with another inmate, and it establishes the rules by which an inmate can obtain this authorization. The Department is not aware that the CCR section 3139 provisions run contrary to any court cases or other law.

Comment F: Commenter states that not all facilities have an Administrative Segregation Unit.

Accommodation: None.

Response F: See Comment #21, Comment B.

Comment G: Commenter states that in CCR section 3144 the word “director” appears several times and should be changed to the word “Secretary”.

Accommodation: Change the word “director” to “Secretary” in subsection 3144(c)(1).

Response G: The recommended change has been made as noted in the 15 Day Renotice filed on January 31, 2008.

COMMENTS #59 and #60:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

COMMENTER #61:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment B: Commenter states that they are opposed to the requirement that an attorney with they are corresponding confidentially must always have an address that matches the address listed with the State Bar.

Accommodation: None.

Response B: See Commenter #10, Response I.

COMMENTS #62:

Comment A: Commenter states that mail and newspapers should be held for an inmate when they are away from an institution at a hospital.

Accommodation: None.

Response A: The Department contends that the storage of newspapers is a fire hazard. The institutions do not have the capability for storage if inmates are anticipated to be gone for longer than a week. All mail is held if the inmate's absence from the institution is anticipated to be one week or less. If the absence is anticipated to be longer, the mail shall be forwarded. The newspapers will only be held for 72 hours before they are forwarded or returned to sender.

Comment B: Commenter states that in CCR section 3134(a), "Polaroid's" should not have an apostrophe.

Accommodation: The apostrophe has been removed as noted in the 15 day Renotice filed January 31, 2008.

Response B: The Department agrees.

Comment C: Commenter states that CCR subsection 3134(a)(3) should be modified to also allow in postcards in addition to greeting cards.

Accommodation: None.

Response C: The Department contends that the proposed regulations give inmates the ability to obtain through the mail more than enough stationary and envelopes to correspond. This is not the only avenue available to them to obtain these types of materials. The department will not add postcards to the list of allowable stationary items that can come in via the USPS.

Comment D: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response D: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment E: Commenter states that in CCR subsection 3134(a)(10) the phrase "Unauthorized Mail, Return to Sender" conflicts with the regulation in CCR section 3136 that requires a CDCR form 1819 to be issued to the inmate when any mail is withheld. The subsection in CCR section 3134 should also have that requirement so that the inmate can designate disposition of the mail.

Accommodation: Additional clarification has been added as per the 15 day Renotice filed on January 31, 2008.

Response E: The Department understands how these could be perceived as being in conflict. Therefore the following will be added to the end of that section. "Inmates shall be notified pursuant to CCR section 3136". It has always been policy that inmates are notified for all mail that is censored or rejected; this will only help to clarify this specific issue.

Comment F: Commenter states that frequently attorneys provide return envelopes with metered postage that shows a date, which may pose a problem with respect to CCR subsection 3134(b)(2).

Accommodation: None.

Response F: The Department contends that the language pertaining to metered envelopes comes directly from the Domestic Mail Manual. These are federal regulations that we must abide by. If the metered envelopes from the attorneys are legally done within the guidelines of the USPS regulations, then they will be given to the inmates. Commenter should note that metered envelopes that are dated are legally only good for the date they were date stamped.

Comment G: Commenter states that CCR subsection 3134(c)(1) must be more explicit because prisons will do things differently. High Desert, for example, will allow packages to be sent out by using UPS, with charge to the trust account. Avenal on the other hand will only allow packages to be sent out First Class, which is much more expensive.

Accommodation: None.

Response G: The Department contends that it will not specify the types of postage rates that can be utilized, since all are legal with the USPS. If this is a problem at a particular prison, then the inmates have avenues of recourse through the appeals system, and the Men's Advisory Council.

Comment H: Commenter states that CCR subsection 3134(g) must make an exception for the Koran to be allowed into a prison with its hard cover because it cannot be altered by removal of its cover.

Accommodation: None.

Response H: The Department responds that for recognized prison security issues all hardback books that are mailed to inmates must have their covers removed to be introduced into an institution, or be returned to sender. There is no exception to this rule for a Koran or for other religious scriptures. The hard cover of a book can be altered to allow storage of weapons or contraband, and in some cases may even be stiff enough to be fashioned into a weapon. An inmate may receive a paperback version of a Koran, which is not subject to have its covers removed, from a bookstore or other authorized vendor. Please see the Approved Personal Property schedule for inmates.

Comment I: Commenter states that CCR subsection 3135(c)(12) is vague and should contain a reference to subsection (d) that follows.

Accommodation: None.

Response I: The Department contends that such reference is not necessary as the definition of what constitutes prohibited material from being introduced into an institution follows directly after the detailed list of prohibited items that cannot be included in mail.

Comment J: Commenter states that there is no standardization of how often an indigent inmate may request materials, because some prisons will allow an inmate to request materials weekly, and some monthly. If an inmate becomes indigent just into the month, he would have to wait until the beginning of the following month to get supplies.

Accommodation: None.

Response J: The Department contends that the commenter should be aware that under the old definition the inmate would have to wait 30 days from when they spent the last of their funds to be declared indigent; this has not changed. What has changed is that they no longer have to be "wholly without funds". So those inmates with a few

cents on their accounts, less than the cost of a First-Class postage stamp, can now legally be declared indigent and receive indigent writing supplies and postage.

Per CCR section 3138, all inmates are to request indigent status and supplies through the Inmate Trust Account Office. Additionally, that same section requires all institutions to issue indigent writing supplies on a weekly basis.

Comment K: Commenter states that the amount of paper that makes up five one-ounce letters is not defined. That is five sheets of paper, minimum, yet many prisons supply only one sheet of paper for each envelope.

Accommodation: None.

Response K: Per CCR section 3138, indigent inmates writing supplies shall be given to inmates on a weekly basis. They are entitled to receive five (5) one-ounce letters per week. The institutions will be directed to ensure that they follow the regulations; meaning, the exact number of pieces of paper to make the letter one-ounce. Non-compliance by an institution should be addressed through the inmate appeal process.

Comment L: Commenter states that it is not clear that for confidential mail, the large envelope that is provided to the inmate is provided at the housing unit. Unless this is specified, housing unit officers will be wanting to forward confidential mail with the cancelled envelopes attached, to the mailroom to then be placed in a large envelope. This would violate confidentiality.

Accommodation: None.

Response L: The Department contends that there are staff other than a housing unit officer that can take and process confidential mail. The indigent inmate can go through their Correctional Counselor, who would have easier access to oversized envelopes. Secondly, the previous regulations did not even address this issue and many indigent inmates were not able to get oversized envelopes for their mail, or to mail anything larger than one-ounce as the regulations specified.

Regardless, CCR section 3142 specifically states, "Inmates shall post confidential mail by presenting the mail unsealed to designated staff. In the presence of the inmate, the staff shall remove the contents of the envelope upside down to prevent inadvertent reading of the contents. If no prohibited material is discovered, the contents shall be returned to the envelope and sealed. Staff shall place their signature, badge number and date across the sealed area on the back of the envelope. Staff shall then deposit the confidential mail in the appropriate depository".

Based on this, the mail is sealed in front of the inmate, and staff can not simply send unsealed "confidential mail" to the mailroom for the appropriate envelope size. At the most, an indigent inmate may occasionally have to wait for someone such as their assigned counselor on the day shift to find them an envelope that is the right size.

Comment M: Commenter questions whether lists are going to be kept of all indigent inmates who are issued envelopes. Nothing prevents an indigent inmate from using envelopes provided at some point in the future, when they might have funds in their account. Unless the Department can develop a bureaucracy to keep indigent envelope records, this will be impossible to enforce.

Accommodation: None.

Response M: The Department advises that CCR section 3138 states "(d) Indigent envelopes issued to an inmate become their property. The inmate shall be allowed to utilize the envelopes regardless of current financial status. A charge shall not be placed against future deposits to the inmate's trust account to recover the cost of materials and postage provided, while the inmate was indigent as defined above".

This language was added so that an indigent inmate who received indigent writing supplies when eligible would be allowed to use them even if they received funds after the fact.

Comment N: Commenter states that the regulations are confusing as to how many copies an indigent inmate is allowed to make for his attorney and the courts.

Accommodation: None.

Response N: See Commenter #9, Response F, and Commenter #28, Response C.

Comment O: Commenter states that there does not seem to be any continuity between facilities and institutions as to when an indigent inmate may receive writing supplies, how much they should receive, and the type of writing implement to be provided.

Accommodation: None.

Response O: The Department contends that the purpose of these regulations is to provide that continuity. Also, see Commenter #9, Response D.

Comment P: Commenter states that CCR subsection 3139(a)(4) is not properly worded, because someone who is discharged is a full citizen and should not be monitored. Commenter contends that the new language should be paroled, not discharged.

Accommodation: The Department would like to thank the commenter for their suggestion and will remove this requirement from CCR section 3139.

Response P: The Department will correct the requested language as noted in 15 day Renotice filed on January 31, 2008.

Comment Q: Commenter states that not all attorneys are members of the Bar.

Accommodation: None.

Response Q: See Commenter #10, Response I.

Comment R: Commenter states that in CCR subsection 3142 (d) the officer that is inspecting outgoing inmate mail prior to it being put into the envelope must do so with the contents being upside down. This same requirement should also pertain to incoming confidential mail, because all too often the officer will partially read incoming mail while inspecting it.

Accommodation: The recommended language has been made as noted in the 15 Day Renotice filed January 31, 2008.

Response R: The Department agrees with the commenter for their suggestion and will change CCR section 3143 to read as follows, "Designated staff shall open the letter in the presence of the addressed inmate at a designated time and place. Staff shall remove the contents of the envelope upside down to prevent inadvertent reading of the contents. Staff shall remove the pages and shake them to ensure the absence of prohibited material".

Comment S: Commenter states that in the first paragraph of CCR section 3143 the word addressee should be changed to address.

Accommodation: Change "addresses" to "address".

Response S: The Department agrees, and the change is reflected in the 15 Day Renotice filed January 31, 2008.

Comment T: Commenter states that the language in CCR subsection 3145(b) is confusing in that staff are directed to return to sender the “outside of the envelope” with respect to confidential mail. Shouldn’t this be the envelope and the entire contents?

Accommodation: The commenter is correct and a change has been made for clarification.

Response T: The Department agrees that this language is confusing and will be changed to reflect that the separate envelope will be returned to the sender. Also, language has been added reflecting that the inmate is entitled to keep the correspondence the enclosures were included with, even though the enclosures are returned.

COMMENTS #63:

Comment A: Commenter states that it is not right for the Department to ban love letters that may have sexual content, and doing so will strain already strained relationships between inmates and their loved ones. For lifers, love letters are the only way to express intimacy.

Accommodation: None.

Response A: The Department contends that while staff do scan all correspondence, they do not have the time to read all correspondence. Staff understand and respect the need for intimacy in personal correspondence. However, staff are also aware that there is a difference between what is intimate correspondence, and what is in fact obscene correspondence. Also, see Commenter #6, Response A.

COMMENTS #64:

Comment A: Commenter states that rather than deeming an inmate ineligible for 20 metered envelopes from the Inmate Welfare Fund, he shouldn’t be denied the monthly allotment if he has between \$.01 and \$7.79. Otherwise the Department creates two categories of indigent inmates. If the indigent inmate has \$7.80 in their trust account and requests metered envelopes, they should be given the entire amount and the trust account zeroed out.

Accommodation: None.

Response A: The Department contends that although the above comment does address an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to GC Section 113435.9, it is either insufficiently related to the specific action or actions proposed, or generalized or confusing to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Comment B: Commenter states that regarding the proposed text in CCR section 3132, any policies not in Title 15 would violate the Administrative Procedures Act as an “underground regulation”. There should be no ambiguity for procedure related to freedom of speech.

Accommodation: None.

Response B: The Department responds that operational procedures are developed and maintained in the Department Operations Manual. Each policy, whether revised or newly adopted, is reviewed for determination of any regulatory impact. Regulations that are required to be changed or newly adopted, such as these changes to the mail regulations, will be subject to the Administrative Procedures Act and included in the Title 15. The Department agrees that these changes to the mail regulations will reduce

ambiguity. The Department further agrees that freedom of speech is an important right, but one that must be monitored in a correctional setting for security reasons.

Comment C: Commenter questions whether the 13 ounce weight cap for First Class mail meets Federal Standards or is it more limiting than Federal Standards.

Accommodation: None.

Response C: The Department asserts that the proposed regulatory changes follow Federal mail guidelines, for standardization and simplicity.

Comment D: Commenter states that with respect to CCR subsection 3133(a)(3), what is the criteria for “a known office of publication”? Some publishers subcontract their printing before distribution.

Accommodation: A definition of a “known office of publication” that is part of the USPS regulations have been included in this section.

Response D: The Department contends that it will only utilize the address that appears in the publication to send any notices that are required. Also, a definition of a “known office of publication” has now been provided.

Comment E: Commenter states that regarding the proposed text of new CCR section 3133(a)(5), see comment A above.

Accommodation: None.

Response E: The Department contends that although the above comment does address an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to GC Section 113435.9, it is either insufficiently related to the specific action or actions proposed, or generalized or confusing to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Comment F: Commenter states that there is no penological reason to require that the outside of each envelope should contain the notation that the correspondence is from a state prison, unless it is going to another state prison.

Accommodation: None.

Response F: The Department contends that this is not a new requirement. The California State Legislature has long been interested in ensuring the safety and security of the public, as well as promoting victims rights. It is in this spirit that the Department requires that all outgoing inmate mail must state that it originated from a State Prison. This notation informs the receiver of said mail of its exact origin.

Comment G: Commenter states that CCR subsection 3133(b)(5) is another duplication of (b)(3) and does not need to be adopted.

Accommodation: None.

Response G: The Department contends that security is highly important when it comes to the inspection of any item being introduced into the prison system, or leaving the prison system. CCR subsection 3133(b)(3) applies only to incoming mail and packages. CCR subsection 3133(b)(5) has of necessity been added to apply more broadly to any nonconfidential incoming or outgoing mail.

Comment H: Commenter states that with respect to CCR subsection 3133(c), legal mail should never leave the inmate’s presence unsealed. This would violate confidentiality and privacy. Based on the “mailbox” rule for date of filings by inmates, the trust office should have to automatically provide a check and/or proof of insufficient funds the next business day as most legal mail needs a filing fee or fee waiver.

Possibly Correctional Counselors could get the check from the trust office and put it in the envelope in front of the inmate.

Accommodation: None.

Response H: The Department contends that inmates who require a check or fee waiver to be included in confidential correspondence know to obtain it from the Inmate Trust Office. The actual check or fee waiver is in fact sent to the Correctional Counselor who ducats the inmate to complete the transaction. This process does not need to be reiterated in the Mail regulations since they already exist in the Inmate Trust Account Procedures.

Comment I: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response I: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment J: Commenter questions the proposed text in CCR subsection 3134(b)(4) which reads “above the address” by asking which address this requirement is referring to.

Accommodation: None.

Response J: The Department contends that the commenter should be advised that the language in CCR section 3134(b) is taken from the USPS Domestic Mail Manual. However, for metered mail, it is referring that the statement must go above the receiver’s address. This is standard formatting for metered mail under USPS regulations.

Comment K: Commenter states that regarding proposed text of CCR subsection 3134(h), instead of limiting the cover to being removed, the hard cardboard should be able to be removed keeping the cover intact also.

Accommodation: None.

Response K: The Department contends that this language is merely a reflection of what has been done by the Department for a number of years. Hardbound books cannot not be introduced into the institution from vendors due to the potential for contraband or even weapons to be inserted into the hard cover of the book. Every effort is made to remove the cover carefully to limit damage to the book.

Comment L: Commenter states that the use of the word “appeal” in CCR subsection 3137(c) is somewhat confusing as non-inmates don’t have an appeal system as inmates do.

Accommodation: None.

Response L: The Department contends that the commenter should read CCR section 3137(c) in its entirety. It states, “Persons other than inmates should address any appeal relating to department policy and regulations to the Secretary of the Department of Corrections and Rehabilitation. Appeals relating to a specific facility procedures or practice should be addressed in writing to the Warden or Associate Director of the facility where the appeal issue arises. A written response shall be provided in accordance with CCR section 3084 et. Seq. Appeals that are not

satisfactorily resolved at this level may be forwarded in writing to the Secretary who shall provide a written response in accordance with CCR section 3084 et. seq.”

Comment M: Commenter states that with respect to CCR section 3138, an inmate should only have to give up his weekly allotment of indigent envelopes, and not supplies, when postage going out exceeds the value of weekly rations based on postage rates. The Department should come up with a ratio chart so inmates don't unnecessarily forfeit weekly envelopes exceeding value needed. Indigent envelopes should not be voided, but ought to be receipted and returned to the mailroom to reissue or use for some other purpose.

Accommodation: The Department agrees and the changes are reflected in the 15 Day Renotice filed January 31, 2008.

Response M: The Department contends that CCR section 3138 only states the inmate must give up the applicable number of “envelopes”, not the rest of the supplies (paper and writing implement). The language will be changed to delete the requirement to void the envelope. Direction will be given to staff as to how many pages can be contained in a one-ounce letter. This information will be useful to ensure that the right amount of paper is issued as part of the indigent writing supplies for the five (5) one-ounce letters per week.

Comment N: Commenter states that indigent envelopes that are not used ought not to be voided but ought to be reissued by the mailroom at a later date. Also, counselors and unit staff should have a ready supply of large envelopes to hand out to indigent inmates.

Accommodation: None.

Response N: The Department agrees that unused indigent inmate envelopes should not be voided, as noted in the response to Comment M above. However, they will not be used as institutional U-save reusable envelopes. Large envelopes for indigent inmates must be controlled by the mailroom, and will not be dispensed indiscriminately by counseling or unit staff.

Comment O: Commenter states that inmates should have free and unlimited mail to CDCR Headquarters.

Accommodation: None.

Response O: The Department contends that indigent inmates can use their indigent envelopes to direct mail to Headquarters, but they will not be allowed free and unlimited mail to Headquarters.

Comment P: Commenter questions just who does the case by case evaluation noted in CCR subsection 3138(g)(2).

Accommodation: None.

Response P: The Department contends that the facility law librarian is responsible for determining how many copies of legal material an indigent inmate must send to the court, primarily based on communication and direction the court is providing the inmate.

Comment Q: Commenter states that the Department should make an effort to ensure that incoming checks are credited to an inmates trust account within three working days of receipt at the prison.

Accommodation: None.

Response Q: The Department contends that the time frame for the processing of funds into and out of an inmate Trust Account are not part of the Mail regulations and

therefore this suggestion can not be considered at this time. However, every effort is made to deposit funds into an inmates account within as short a time frame as possible.

Comment R: Commenter states that there is a typographical error in the cite in CCR section 3144; the word *Walff* should be spelled *Wolff*.

Accommodation: None.

Response R: The Department contends that the word *Wolff* in that cite is already spelled correctly as *Wolff*.

Comment S: Commenter states that with respect to CCR subsection 3145(c)(3), it is not clear what the criteria for the caseworker's judgment would be with respect to what correspondence could be placed in a C-file.

Accommodation: Language has now been adopted in the regulations to indicate that this is discretionary and is handled on a case by case basis.

Response S: The Department contends that it is the caseworker's responsibility to maintain the C-files of the inmates on their caseload. As some C-files can get voluminous, a caseworker must rely on their experience to determine if a particular correspondence is significant to warrant placement in a C-file. For example, the death of a spouse or a parent being reported in correspondence may have a significant bearing on the pending parole plans an inmate may have, and should be placed in the C-file. However, a letter from a loved one would not be considered for C-file placement; the inmate would be best served to keep that correspondence in their personal file.

COMMENTER #65:

Comment A: Commenter states that they are already being taxed 55 percent when they send funds to their son in prison, so it is not fair to be taxed again when they send writing materials to him.

Accommodation: None.

Response A: The Department anticipates that the "tax" commenter speaks to is likely court-ordered restitution for victims. The commentator therefore has mischaracterized the nature of the deduction. This deduction from deposits made to an inmate trust account is mandated by law (Penal Code 2085.5). The Department must comply with the law in deducting a specific percentage from all funds that are being sent to an inmate, regardless of the intended purpose of those funds. The Commenter is advised to contact their state legislator if they want to change the law.

COMMENTER #66:

Comment A: Commenter states that at the institution where he is housed he is not allowed access to the Operational Procedures (OP's) for review purposes, as they are considered confidential at his institution.

Accommodation: None.

Response A: The Department contends that while some of the OP's are in fact confidential, most of them are not and are available in the custody watch offices. This is evidenced by the fact that frequently inmates from various institutions will forward correspondence to the attention of this Branch that will include a copy of a particular OP from their institution.

COMMENTER #67:

Comment A: Commenter states that in the definitions section of the proposed regulations there is a seven day delivery goal to get incoming First Class mail to the

inmate. That seven day requirement is missing, however, from the definitions of the other types of mail, such as Standard Mail.

Accommodation: None.

Response A: The Department contends that it is Departmental practice to date the bins of mail that are received daily, with the date received. These are the dates that are utilized to process the oldest mail first and to ensure that the time frames are met. Institutions currently try to deliver all First Class mail within the seven day time frame.

As to time frames for Periodicals and Standard Mail (magazines and newspapers sent in via the USPS), the institutions try to deliver those also within the seven day time frame. However, the commenter needs to know that these types of mail are not considered priority with the USPS. First Class mail is the priority for delivery, then Periodicals, Packages and Standard Mail.

Institutions try to do the best they can with the limited resources that they have in the mailrooms. These regulations allow inmates to receive more volume of mail than previously.

Comment B: Commenter states that a constant problem with mailrooms is mail addressed to chaplains from various religious organizations for the benefit of inmates to be distributed through the chaplains. At several prisons, mail addressed to the chaplain of a particular religious organization, say a Muslim or Jewish chaplain for example, is not being delivered, and is usually tossed.

Accommodation: None.

Response B: The Department contends that if a religious organization chooses to send mail to a specific inmate through a chaplain, then the chaplain understands that they are to deliver that mail. The religious organizations should address the mail to the specified inmate if they want to ensure timely delivery. Typically a religious organization knows that if they are sending correspondence to a specific inmate, they must include the inmate's identification number on the correspondence in order for it to be delivered. Further, it is the inmate's responsibility to advise all their correspondents to include the identification number on the envelope.

Comment C: Commenter states that for many periodicals, it is not possible to add the inmate identification number on the mailing label. Many religious organizations supply newsletters, or tracts that are sent to the inmates via the chaplain. A guarantee of delivery of these items should be included in the proposed regulations.

Accommodation: None.

Response C: The Department contends that this question would be more appropriately addressed by the chaplains. If a religious organization is sending in pamphlets for distribution to any inmate, there is nothing the Mail regulations can do to ensure that a chaplain will distribute those pamphlets.

Comment D: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them

Accommodation: See Accommodation to Commenter #1, Comment A.

Response D: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment E: Commenter states that the proposed regulations fail to provide for religious icons and appliances which are commonly approved for inmates, such as Muslim beads or carpets, or Jewish icons. The regulations should provide that a chaplain examine and approve the item before it is returned to sender. They should not be returned to the vendor without both the inmate's and the chaplain's approval.

Accommodation: None.

Response E: The Department contends that these regulations do not allow packages to come into inmates from personal correspondents. Therefore, the packages for these types of items are either a special purchase, vendor package, or come in through the Chaplain's Office. The Mailroom does not handle the packages for special purchases or the vendor packages. Packages addressed to the Chaplains would not be opened, but would be delivered to the Chaplains who would have control over, delivery, and documentation of the contents. The commenter is also referred to CCR section 3213.

Comment F: Commenter states that many stakeholders in prison reform have, out of empathetic humanity, sent small amounts of money to the accounts of inmates not related to them. These modest sums allow otherwise indigent inmates to afford personal items and toiletries via the canteen system. To prohibit monetary contributions to those accounts from anyone other than immediate family is an untenable prospect.

Accommodation: The Department has made the decision to remove this stipulation. The belief is that there are sufficient procedures in place to monitor and impede the payment of drug debts from an inmates' fund.

Response F: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue that allows monies to be sent in my non-family members.

Comment G: Commenter states that the Department lacks the capacity at all prisons to translate all languages for correspondence being sent to and from foreign countries. Foreign nationals should not be denied access to incoming or outgoing mail of this nature.

Accommodation: None.

Response G: The Department contends that it has contracts for translation services that can be utilized if a letter must be translated. Regardless, the inmate must be noticed according to CCR section 3146 of any delay in the delivery of correspondence, and the decision relating to the disposition of that correspondence if other than delivery.

COMMENTER's #68 through #80:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

COMMENTER #81:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being

required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment B: Commenter states that the proposed regulations restrict an inmate from receiving cotton paper or writing paper other than paper that is white. Also, CCR subsection 3134(a) lists certain items that are acceptable in first class mail, which may give the impression that items not on the list are not acceptable, such as artwork, newspaper clippings, or email copies. As such the list should be removed. Finally, the limit on how much writing paper an inmate can have should be increased to at least 500 pages.

Accommodation: None.

Response B: The Department contends that the limitation on the number of books an inmate may possess is governed by the property regulations. As to the amount and type of paper an inmate may have, see Commenter #9, Response D.

COMMENTER's #82 through #86:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

COMMENTER #87:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment B: Commenter states that the Department needs to give attention to the increasing theft of magazines by some guards. It's not fair when someone with two strikes could get a 25-to-life sentence for stealing a magazine, and the guards do it routinely.

Accommodation: None.

Response B: The Department contends that staff are not, and never will be, allowed to circumvent the delivery of an inmate's mail for personal use. This is a violation of the USPS regulations and Department policy. When these proposed regulations are codified and a memorandum addressing their use is issued, staff will be reminded that this practice, if it exists, is illegal and will subject staff to appropriate disciplinary action.

COMMENTS #88:

Comment A: Commenter questions why greeting cards are being limited to blank greeting cards? Does this mean correspondents can't send their loved ones a birthday card anymore?

Accommodation: None.

Response A: The Department contends that family members will still be allowed to send in cards with writing and sentiments on them. This language allows an inmate's personal correspondent to enclose "blank greeting cards" inside a letter for the inmate's future use.

Comment B: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Orders will only be able to be made by phone, and the officers will now be able to steal the stamps.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response B: Correspondents will be able to purchase stamps from any vendor that they choose. Mailroom staff would be disciplined if caught involved in the theft of any item. Also, see Commenter #1, Response A.

Comment C: Commenter states that mailroom staff have been known to kick in packages when they are overburdened. Non-delivery of packages is not fair to inmates who have good behavior. This statement needs to be removed from the regulations.

Accommodation: None.

Response C: The Department contends that such behavior as described by the commenter is unprofessional and would not be tolerated by the Department. Correctional staff are well supervised and well trained. The Vendor Package Program (or quarterly packages) is not a part of these regulations. Additionally, mailroom staff do not handle the Vendor Packages.

Comment D: Commenter expresses concern that a lockdown can affect the receiving of a package, which is like punishment for the group of people that are under lockdown.

Accommodation: None.

Response D: See Commenter #11, Response A.

Comment E: Commenter states that CCR subsection 3134(h) shows great disrespect for learning and school books should be exempt from this practice of removing the hard book cover. Also, loss of binding makes use and reuse very difficult.

Accommodation: None.

Response E: The Department contends that the commenter should be thanked for their suggestion and perception. However, the only way an inmate will be allowed to receive a book that has a hard cover is with the cover removed. This is for security purposes, so that contraband can not be secreted in the binding. The commenter is advised that nearly all books (except newly released novels) are available with soft covers, especially school books.

Comment F: Commenter states that modified program is just another name for lockdown. Students pursuing a course of study need their material in a timely manner. Non-delivery of text books because of some misbehavior of a few inmates should not be an excuse for not delivering textbooks.

Accommodation: None.

Response F: The Department contends that institution staff do the best that they can to safely deliver packages and books when the institution is on a modified program. The delivery may be delayed; however, they are delivered.

Comment G: Commenter states that CCR section 3135 indicates that correspondence containing coded messages will be returned. Just how, and which staff, gets to decide what messages are coded?

Accommodation: None.

Response G: The Department contends that if the staff member reviewing the mail believes that correspondence may contain a coded message, the Investigative Services Unit is contacted and a specialized and trained staff member reviews the document. Under no circumstances will staff simply say the letter contains coded messages as a means of returning the letter or non-delivery.

Comment H: Commenter states that many stakeholders in prison reform have, out of empathetic humanity, sent small amounts of money to the accounts of inmates not related to them. These modest sums allow otherwise indigent inmates to afford personal items and toiletries via the canteen system. To prohibit monetary contributions to those accounts from anyone other than immediate family is an untenable prospect.

Accommodation: The Department has made the decision to remove this stipulation. The belief is that there are sufficient procedures in place to monitor and impede the payment of drug debts from an inmates' fund.

Response H: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue that allows monies to be sent by non-family members.

COMMENTER's #89 through #92:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

COMMENTER #93:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment B: Commenter states that many stakeholders in prison reform have, out of empathetic humanity, sent small amounts of money to the accounts of inmates not related to them. These modest sums allow otherwise indigent inmates to afford

personal items and toiletries via the canteen system. To prohibit monetary contributions to those accounts from anyone other than immediate family is an untenable prospect.

Accommodation: The Department has made the decision to remove this stipulation. The belief is that there are sufficient procedures in place to monitor and impede the payment of drug debts from an inmates' fund.

Response B: The Department issued a 15 Day Renotice on January 31, 2008 that alters language on this issue that allows monies to be sent by non-family members.

Comment C: Commenter states that inmate restitution is terrible for those inmates that only get a little money from time to time, and then have to decide between inmate hygiene items or stamps at the canteen.

Accommodation: None.

Response C: The Department stresses that the state legislature has passed legislation that mandates the percentage rate that must be deducted from those funds sent to an inmate for crime victim's restitution (see Penal Code 2085.5). The Department has no authority to adjust that percentage rate.

Comment D: Commenter states that the fourteen day delivery for packages is unrealistic, because usually it takes months to receive a package, and by then any food items have spoiled.

Accommodation: None.

Response D: The Department contends that the Vendor Package Program (or quarterly packages) is not a part of these regulations. Additionally, mailroom staff do not handle the Vendor Packages.

COMMENTS #94:

Comment A: Commenter states that manuscripts as identified in CCR subsection 3134(e) does not have the same definition as what manuscripts are defined as in CCR section 3000, by leaving out the words paintings, sketches, and drawings.

Accommodation: The commenter is correct. CCR section 3134 now has the same definition as that found in CCR section 3000.

Response A: The Department has adjusted the language as per the 15 Day Renotice issued on January 31, 2008.

COMMENTS #95:

Comment A: Commenter states that he is housed in a restricted housing unit, and feels he does not obtain enough writing implements with which to correspond.

Accommodation: None.

Response A: The Department contends that the commenter is correct in noting that writing implements are a controlled item in a restricted housing unit. However, every effort is made to provide writing implements to inmates to be able to correspond. There is other recourse available if an inmate is not satisfied with his living conditions, such as the inmate appeals system. In addition, if an inmate in restricted housing establishes a history free of rule violations they will often be reassigned to less restricted housing with more privileges.

Comment B: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being

required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response B: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

Comment C: Commenter states that the Department still restricts several items approved under state guidelines for quarterly packages and special purchase orders, but does not provide a list of those restrictions.

Accommodation: None.

Response C: The Department contends that the Vendor Package Program (or quarterly packages) is not a part of these regulations. Additionally, mailroom staff does not handle the Vendor Packages.

Comment D: Commenter states that CCR subsection 3141(c)(9) should not restrict legitimate legal organizations from whom inmates might seek aid. Commenter contends that he must disclose what he feels is confidential information to these organizations, which should be treated as confidential.

Accommodation: None.

Response D: See Commenter #2, Comment A.

COMMENTER #96:

Comment A: Commenter states that restricting correspondents of inmates to send postage stamps to inmates that have been ordered from a USPS internet site and sent directly from the USPS to the inmate is unrealistic as many inmate families do not even have a credit card, live in rural areas, or do not have access to a computer. Being required to send in stamped envelopes is not fair. As such, many inmates who receive stamps now will not get them.

Accommodation: See Accommodation to Commenter #1, Comment A.

Response A: Correspondents will be able to purchase stamps from any vendor that they choose. Also, see Commenter #1, Response A.

COMMENTER #97

Comment A: Commenter states that seven calendar days does not give mailroom staff sufficient time to process and deliver inmate mail, and that the time frame for the processing of mail should be extended to 7 working days.

Accommodation: None.

Response A: The Department contends that it has an obligation to process and deliver mail in as timely a manner as possible. The Department has carefully reviewed the mail processing of each institution/facility mailroom and has determined that most are able to deliver mail within the 7 calendar day time frame. The goal of the Department is to work toward the codification of these mail regulations and hence standardize all of the mailroom processes to work towards ensuring that the Department can successfully achieve its goals.

15-DAY RENOTICE

Public comment period was January 31, 2008 through February 18, 2008

A 15 Day Renotice was forwarded to 97 commenter's who provided written comments during the public comment period. In addition, the Renotice was placed on the Department's public website. Comments were received from 6 commenter's.

COMMENTER #1

Comment A: Commenter provides a suggestion to change the definition of "indigent inmate" back to the originally proposed definition.

Accommodation: None.

Response A: The Department contends that public comments to the originally proposed definition of "indigent inmate" suggested that the definition was too ambiguous and might even be somewhat penalizing to an indigent inmate. As such, the Department determined that the revised definition of having trust account funds of less than \$1 provides a clearer definition and more favorable treatment of an indigent inmate. The Department notes there were no other public comments on this matter during the 15 Day Renotice public comment period.

Comment B: Commenter states that having to notice a publisher whose publication is being rejected as contraband of all the affected inmates is just not practical and would be too time consuming given available resources.

Accommodation: None.

Response B: The Department contends that the primary rational for developing the requirement to notice a publisher whose publication is being treated as contraband of all affected inmates arose out of threatened litigation. The Department agrees that this requirement is appropriate, as well as providing a publisher a method of appealing if they believe that a publication should not be considered as contraband. The Department also contends that automated systems may be available that would speed the process to notice publishers of all affected inmates.

Comment C: Commenter states that their mailroom not only receives confidential envelopes for inmates, but confidential boxes as well. It does not seem appropriate from a security standpoint to allow those boxes into a secure perimeter without having been opened first to be inspected before being allowed into a secure perimeter.

Accommodation: None.

Response C: The Department contends that all mailrooms are equipped with a large x-ray machine that is used to inspect all incoming mail. There are procedures in place should any mail give cause to be suspicious. Further, unless a box is from a vendor, it is not appropriate to allow such a container to remain with an inmate due to the possibility that contraband could be inserted into the variegated portions of the cardboard container.

COMMENTER #2

Comment A: Commenter states that the prison where he is housed does not allow any calendars into the prison.

Accommodation: None.

Response A: The Department contends that this is why the Department is interested in promulgating these regulations, so as to standardize what is and what is not allowed into the prison.

Comment B: Commenter states that while the new regulations will allow an inmate writing tablets, they do not specify how many tablets an inmate may have.

Accommodation: None.

Response B: The Department contends that the number of writing tablets an inmate may have is detailed in the Authorized Personal Property Schedule, which is not a part of the mail regulations.

Comment C: Commenter states that the Department shouldn't try to define what is or is not obscene in personal correspondence, particularly with respect to intimate correspondence between a husband and wife.

Accommodation: None.

Response C: The Department notes that this comment was raised on numerous occasions with respect to the initial filing of the regulations. Commenter is directed to Oral Commenter # 6, Response A.

COMMENTER #3

Comment A: Commenter states that in the last sentence of the definition of First Class mail in CCR subsection 3133(a)(1) there is an incorrect word that makes the definition somewhat confusing to the reader. That word is "from", and should be changed to the word "be".

Accommodation: The Department ~~partially~~ agrees, and the word "from" will be changed.

Response A: The Department contends that the word should be changed to "at" as a non-substantive change for clarity, and would read "....seven calendar days from receipt of the mail at the facility mailroom.

Comment B: Commenter states that in CCR subsection 3191(c) the language is unclear as it merely refers to the third level of appeal, and does not clarify that to mean the third level of appeal at the Director's Level of appeal.

Accommodation: None.

Response B: The Department contends that the inmate appeal form that speaks to the third level of appeal is already very clear that this is at the Director's Level of appeal. Separate regulations already exist that govern and describe the inmate appeal process.

COMMENTER #4

Comment A: Commenter states that in the last sentence of the definition of First Class mail in CCR subsection 3133(a)(1) there is an incorrect word that makes the definition somewhat confusing to the reader. That word is "from", and should be changed to the word "be".

Accommodation: The Department partially agrees, and the word "from" will be changed.

Response A: The Department contends that the word should be changed to "at" as a non-substantive change for clarity, and would read "....seven calendar days from receipt of the mail at the facility mailroom

Comment B: Commenter states that in CCR subsection 3134(a)(1) the word "Polaroid's" should not have an apostrophe.

Accommodation: The Department agrees.

Response B: The Department will make a non-substantive change to remove the apostrophe from the word “Polaroid’s” for accuracy.

Comment C: Commenter states that many attorneys meter the return envelopes they send into an inmate for the return of papers. It is generally not the case that an attorney’s envelope would be imprinted “NO POSTAGE STAMP NECESSARY”. How will inmates be able to let the attorneys know about this regulation?

Accommodation: None.

Response C: The Department contends that the language that was included in the regulations was taken directly from the USPS Domestic Mail Manual. These are the only type of metered envelopes that can legally be sent in to inmates, and most attorneys should be aware of this requirement.

Comment D: Commenter states that there does not appear to be any consistency between the various institutions about what constitutes contraband, particularly with respect to periodicals.

Accommodation: None.

Response D: The Department contends that this is the reason for publishing these regulations. The new regulations will provide consistency throughout the state such that when an inmate transfers to another institution there would be an expectation that what is contraband at one institution will also be contraband at the next, notwithstanding custody levels or privilege groups.

Comment E: Commenter states that in CCR subsection 3134(i) the words “...for all inmates” are typed in twice, which appears to be an error.

Accommodation: Remove one of the phrases “for all inmates” in this subsection.

Response E: The Department agrees. This is a nonsubstantive correction for accuracy and one of the phrases “for all inmates” has been removed.

Comment F: Commenter states that in CCR subsection 3135(c)(3) the disallowance of contraband is vague and needs to be defined better.

Accommodation: None.

Response F: The Department contends that contraband is sufficiently explained in CCR section 3000, definitions, as meaning anything which is not permitted, in excess of the maximum quantity permitted, or received or obtained from an unauthorized source.

Comment G: Commenter states that the criteria for approval for correspondence between inmates should be defined better in CCR subsection 3139(c).

Accommodation: None.

Response G: The Department contends that the criteria for correspondence approval between inmates are sufficiently explained in CCR subsections 3139(a) and (b). The process needed for an inmate to be able to correspond with another inmate, or a parolee or probationer, is not a complex process. Authorization to correspond must be obtained from a specific level of employee in subsection 3139(a), and the criteria needed to gain that authorization to correspond is set forth in subsection 3139(b). The only criteria needed to gain approval to correspond are that the correspondent must not be a gang member or be involved with a known terrorist group, information which would be contained in a Central file or a field file.

Comment H: Commenter states that once again the exact criteria for inmate to inmate correspondence should be listed.

Accommodation: None.

Response H: The Department contends that those criteria are sufficiently explained in CCR subsections 3139(a) and (B).

Comment I: Commenter states that the new regulations stipulate that staff should only inspect confidential mail and not read it. However, it is common for staff to actually read this mail. Staff should be trained that this is not appropriate.

Accommodation: None.

Response I: The Department contends that these regulations will more fully explain the correct procedures for the handling and inspection of confidential mail to staff who handle confidential mail.

COMMENTER #5

Comment A: Commenter questions whether the proposed regulations have been implemented yet.

Accommodation: None.

Response A: The Department expects that the proposed regulations will be implemented within the next few months.

COMMENTER #6

Comment A: Commenter states that due to the constitutional importance of books, magazines, and other publications to publishers and inmates alike, the information contained in CCR subsections 3134(F) through (J) should become a new section within the CCR's. This new section would create an easy reference point for all staff dealing with inmate mail issues.

Accommodation: None.

Response A: The Department will not at this time entertain the proposal to change this section. The Department contends that the proposed regulations were thoroughly vetted with mailroom staff and other staff familiar with mail procedures to develop a cohesive set of regulations that would standardize mail operations and bring them into conformity with Federal mail regulations. The Department will, however, entertain this proposal the next time these regulations are updated.

Comment B: Commenter states that the former regulations stipulated that each Warden shall prepare and maintain a plan of operation regarding the sending and receiving of inmate mail, which then must be approved by the Director. The proposed regulations eliminate this requirement. Requiring the Secretary to review operational procedures regarding mail helps ensure that the institutions properly implement the regulations in their plans of operation. Without this oversight, institutions very likely will adopt operational procedures that improperly implement the regulations, thereby increasing the chance that inmate rights to correspond with the outside world will be impinged upon, and expose the Department to increased liability. In fact, operational procedures should just be eliminated altogether.

Accommodation: None.

Response B: Once the regulations have been codified, the Wardens will not have the ability to create an "Operational Procedure". Due to the difference in the physical plant of each institution, a Department Operations Manual Operational Procedure can be created in order to answer local issues for things like the days of mailroom operation; where mailbags are picked up by custody staff and returned; location of mailrooms; how inmates are informed of local mail practices; etc.

It is the Department's intent that all of the DOM supplements be reviewed and approved by each Warden within 180 days of the regulations being codified and implemented. Audits of the mailrooms and the DOM supplements are part of the annual audits conducted by the Secretary's auditors.

Comment C: Commenter states that the regulations provide far too long a time period for the processing of publications and to send notifications to publishers of rejected publications. The mail and publications should be distributed to inmates within 3 business days of receipt at the mailroom.

Accommodation: None.

Response C: The Department contends that it is in its best interest to distribute all incoming inmate mail as quickly as possible to encourage timely communication between inmates and their correspondents, and to alleviate an unnecessary buildup of mail in a mailroom. First Class mail is given the highest level of delivery priority, and is frequently delivered in 3 or 4 business days, which is within the parameters of the 7 day calendar goal for delivery. Periodicals are not considered as high a delivery priority, but are delivered as quickly as possible given the large size of the California prisons and the available resources in each mailroom.

Comment D: Commenter states that the authority to disallow correspondence that does not present a danger to the institution should not be delegated below the staff level of a Warden or a Chief Deputy Warden.

Accommodation: None.

Response D: The Department disagrees. The reading of inmate mail is not within the purview of the role of a Warden, unless there is some particularly significant reason to bring a case to the attention of a warden. A Facility Captain, who has first hand knowledge of the specific inmates housed in their facility, is much more capable of making a determination of how significant a danger a certain correspondence may pose to the safety and security of the facility.